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1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE WESTERN DISTRICT OF LOUISIANA

LAFAYETTE DIVISION

Civil Action No. 6:22-cv-01130

3  
4 STATE OF ARIZONA, et al.,

5 Plaintiffs,

6 v.

7 MERRICK GARLAND, in his official  
Capacity as Attorney General of the  
8 United States, et al.,

9 Defendants.

\_\_\_\_\_ /

10  
11  
12 DEPOSITION OF ANDREW ARTHUR

13 Taken Via Video Conference

14 Thursday, December 14, 2023

15 Beginning at 10:05 a.m.

16  
17  
18  
19  
20  
21  
22  
23  
24  
25 Job No. CS6327627

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P R O C E E D I N G S

\* \* \* \* \*

(Witness Sworn.)

MR. SCHULTZ: So we are on the record. And again, it's 10:05 a.m. Andrew Arthur, the witness, has just taken the oath of office. This is Evan Schultz speaking. Opposing Counsel is Scott. And Scott, because this deposition is virtual and the court reporter is not in the same room as you, do we agree that the court reporter is an officer who is permitted to administer the oath by video conference?

MR. ST. JOHN: Assuming she's a North Carolina court reporter, yes.

MR. SCHULTZ: Ms. Marsh did tell me before that she's in North Carolina, and I saw her nodding her head.

Do you want to confirm that, Ms. Marsh?

COURT REPORTER: Yes, I am in North Carolina.

MR. SCHULTZ: And Scott, Counsel, do you agree not to record this deposition?

MR. ST. JOHN: You know, I will agree to the rules and nothing more, nothing less. We've had an e-mail correspondence and this came up

1 during the last deposition. The state does not  
2 make stipulations that are not agreed to in  
3 advance.

4 So if you're asking for anything, it's  
5 going to be the rules, nothing more, nothing  
6 less.

7 MR. SCHULTZ: Are you recording this?

8 MR. ST. JOHN: I'm not the one being  
9 deposed. So the state agrees to the rules,  
10 nothing more, nothing less.

11 MR. SCHULTZ: Okay. And I'm sorry, are you  
12 currently recording this now is all I'm asking.

13 MR. ST. JOHN: I'm not the witness. I'm  
14 not here to answer questions.

15 MR. SCHULTZ: Okay. So you're not going to  
16 answer that. Thank you.

17 ANDREW ARTHUR,

18 having been duly sworn, testifies as follows:

19 EXAMINATION

20 BY MR. SCHULTZ:

21 Q. Judge Arthur, do you agree not to record  
22 this deposition? I saw your head. I couldn't hear,  
23 though.

24 A. Sorry. I was opening a thing of nuts. I  
25 do. I muted myself. Sorry about that.

1 Q. That's okay. Thank you. All you all set?  
2 Do you want to take another minute before we start?

3 A. I'm good to go, Counsel. Please.

4 Q. Thank you. And turning to Judge Arthur, do  
5 you agree not to text or call or e-mail or instant  
6 message any person during this deposition unless  
7 we're on a break and there's no question pending,  
8 except for figuring out whether or not there's a  
9 privilege? Is that something you can agree to, sir?

10 A. Yes, sir.

11 Q. Okay. Thanks. And are you currently in a  
12 quiet place where you won't be disturbed, where you  
13 won't be overheard?

14 A. I am, sir.

15 Q. Thanks. I'm going to be asking you a  
16 series of questions and the reporter is going to  
17 write down your answers to that.

18 Do you understand that?

19 A. I do, sir.

20 Q. This isn't the first time you've been  
21 deposed. I know you were deposed in this case a week  
22 or so ago as a 30(b)(6) witness; is that right?

23 A. That's correct, sir.

24 Q. This will sound familiar, but I'll still go  
25 through these just to make sure everything is on the

1 record.

2 You do need to give verbal responses. That  
3 means please don't just nod your head. Please don't  
4 just say "uh-huh." Do you understand that you need  
5 to answer questions using words?

6 A. I do, Counsel.

7 Q. Thank you. And when you speak -- and this  
8 is always true, but all the more so because we're  
9 virtual here or I should say we're on the Microsoft  
10 Teams remote system -- please always be sure to use a  
11 strong voice and to speak clearly, and that way the  
12 court reporter can transcribe the deposition  
13 accurately.

14 So do you understand that it's important  
15 for you to please speak clearly and loudly?

16 A. I do, Counsel.

17 Q. Okay. Thank you. And something else to  
18 point out -- this is always true again, but all the  
19 more so in virtual depositions: It can be very  
20 difficult whenever there's any crosstalk at all  
21 because sometimes the words will just cut out and  
22 then the court reporter won't hear anything.

23 So let's just everyone be aware of that and  
24 try not to talk over each other. Some of it  
25 inevitably happens. Is that something you can please

1 try to avoid?

2 A. Yes, sir.

3 Q. Thank you. Okay. And along those same  
4 lines, when I ask a question, please wait for me to  
5 finish the question before you answer. It makes it  
6 easier for the court reporter, but it also makes it  
7 easier for you so you know where I'm going.

8 So do you understand to please wait for me  
9 to finish asking the questions?

10 A. I do, Counsel.

11 Q. Thank you. And if you don't hear a  
12 question, I can repeat it. And if you don't  
13 understand a question, I can repeat it.

14 So is it clear to you that if you don't  
15 hear the question or that you don't understand the  
16 question, that you should please tell me?

17 A. Yes, Counsel.

18 Q. Okay. Now, unless you tell me otherwise,  
19 I'm going to assume that you've understood and heard  
20 the entire question.

21 So can you please confirm that  
22 understanding that I just told you?

23 A. Yes, Counsel. And if I don't understand  
24 anything that you say or don't hear part of it, I  
25 will ask you to repeat it.



1 Q. Please. Thank you so much. That will be  
2 helpful.

3 Now, please don't guess. If you don't know  
4 the answer to a question, please just tell me that  
5 you don't know the answer.

6 So do you understand that you shouldn't  
7 guess?

8 A. I do, Counsel.

9 Q. Okay. Thank you.

10 MR. SCHULTZ: And let me just turn to  
11 Ms. Marsh for a second. Is this pace okay for  
12 you? Are you doing okay taking everything down?

13 COURT REPORTER: Yes. It's perfect.

14 BY MR. SCHULTZ:

15 Q. Okay. So turning back to Judge Arthur,  
16 this testimony is being given under oath, which is  
17 similar to the oath that one takes on a stand at  
18 trial.

19 So do you understand that you just now this  
20 morning took an oath to give complete and truthful  
21 answers?

22 A. I did, Counsel.

23 Q. Okay. Now, if you realize at some point  
24 during the deposition that an earlier answer that you  
25 gave was incomplete or not accurate, please just let

1 me know and I will give you a chance to follow up on  
2 that. Okay?

3 A. Thank you, Counsel. Yes.

4 Q. Now, we can take breaks during the  
5 deposition. If you need to take one, please let me  
6 know. Same for you, Counsel, and we will do the  
7 same.

8 So first of all, do you understand that you  
9 can ask for a break?

10 A. I do, Counsel.

11 Q. Now, if there's a question pending, I am  
12 going to ask you to please answer the question before  
13 we take the break.

14 So do you understand that?

15 A. I do, Counsel.

16 Q. And please only answer the questions that  
17 I've asked. Again, it just helps move things along  
18 in many ways.

19 So do you understand that you should only  
20 answer the questions that I ask, please?

21 A. I do, Mr. Schultz.

22 Q. Now, after the deposition is over, there  
23 will be a transcript that's circulated, and at that  
24 point you can review the transcript that's going to  
25 be generated by the court reporter from the testimony

1 today, and you'll have an opportunity to correct any  
2 errors or typos that you find.

3 Do you understand that?

4 A. I do, Counsel.

5 Q. And if you do make changes to the  
6 transcript, then I will be able to comment on those  
7 changes at trial.

8 Do you understand that as well?

9 A. I do, Counsel.

10 Q. Okay. So given everything I've just said,  
11 do you understand the rules of the deposition that  
12 I've just went over with you?

13 A. I do, Counsel.

14 Q. Okay. And are there any physical or mental  
15 conditions that could interfere with your testimony  
16 today?

17 A. There are none.

18 Q. Thank you. And is there any reason that  
19 would prevent you from giving full, accurate, and  
20 truthful testimony today?

21 A. There is none, Counsel.

22 Q. Okay. All right. Well, thank you. So let  
23 me change gears a little bit. Thank you for going  
24 through those rules and initial questions with me.

25 I'm going to turn now to a little bit of

1 the preparation that you've done for the actual  
2 report that you've wrote and also for the litigation  
3 generally.

4 So let me ask you this: When I refer to  
5 the lawsuit or this lawsuit, do you understand that  
6 I'm talking about the case that we're involved in now  
7 that you're giving testimony in that you also gave  
8 the testimony for in the 30(b)(6) deposition?

9 A. That's right, Mr. Schultz. Arizona versus  
10 Garland.

11 Q. Yes. Thank you.

12 When did you first become aware of this  
13 lawsuit?

14 A. I'm not entirely sure when I first became  
15 aware of the lawsuit. Part of my job, my normal job,  
16 I'm a resident fellow in law and policy at the Center  
17 For Immigration Studies. And in the course of my job  
18 at the Center For Immigration Studies, I keep track  
19 of lawsuits, litigation over various policies,  
20 including administrative procedure of cases. So I  
21 can't really tell you a specific date.

22 It might have been pretty close to the time  
23 it was filed. It might have been thereafter.

24 Q. And you wrote about this lawsuit in  
25 something that you wrote for CIS on October 11, 2022.

1 Do you remember that?

2 A. I do not, Counsel.

3 Q. Okay. Well, let me just change it this  
4 way: Do you remember learning about this case before  
5 you wrote about it -- I should say, do you remember  
6 about this -- scratch that.

7 Do you remember hearing about this case  
8 before October 11, 2022?

9 A. 2022? Well, obviously, I'm not entirely  
10 sure. I would have known about it in advance of  
11 writing about it.

12 Q. Okay. So how did you end up coming into  
13 contact with the plaintiffs in this case?

14 A. I was approached by the State of Louisiana  
15 and asked whether I would offer expert testimony in  
16 this case.

17 Q. Okay. And when you say the state, was  
18 there a specific person who approached you?

19 A. Scott St. John.

20 Q. Scott St. John. Thank you. That's counsel  
21 here today for Louisiana, correct?

22 A. Correct. Yes.

23 Q. Do you know what date Mr. St. John  
24 approached you?

25 A. I would not. I'd have to go back. I just

1 don't know.

2 Q. Do you know what year it was?

3 A. Honestly, I don't know that either.

4 Q. Okay. At some point did you enter into a  
5 contract with Mr. St. John on behalf of Louisiana?

6 A. I did.

7 Q. Okay. Do you know the date of that  
8 contract?

9 A. I do not. I don't have it in front of me.

10 Q. Do you remember the year of the contract?

11 A. I really don't.

12 Q. Okay. Can you tell me what the contract  
13 said, please?

14 A. It asked me to offer my expert opinion in  
15 this matter and it set an amount of money that I was  
16 going to be paid for offering my expert testimony.  
17 And there was discussion with Mr. St. John about the  
18 amount that I would be paid.

19 Q. Okay. So when you said that you were asked  
20 to offer your expert testimony, did it say what areas  
21 that your expertise would be used for?

22 A. I'd have to look at the contractual  
23 agreement, Counsel.

24 Q. Let me ask you this: Do you remember if he  
25 asked you to use your expertise in immigration law?

1 A. I believe so, yes.

2 Q. Is that a yes or you believe so?

3 A. I believe so. I'd need to --

4 MR. ST. JOHN: Objection.

5 THE WITNESS: -- look at the contract to  
6 see the exact terms.

7 MR. ST. JOHN: I would object. This is a  
8 written document. Best evidence rule, you  
9 can -- the written document is definitive. The  
10 witness has testified that he has vague  
11 recollection of it, so we should be looking at  
12 the written document.

13 MR. SCHULTZ: Do you have a copy of that?

14 MR. ST. JOHN: Not on me, no.

15 BY MR. SCHULTZ:

16 Q. Judge Arthur, do you have a copy of that?

17 A. I don't have a copy.

18 Q. Please send us a copy of that by tomorrow  
19 close of business.

20 MR. ST. JOHN: I'll take that under  
21 advisement. Unfortunately, one of your  
22 colleagues indicated that the United States  
23 would not take requests on the record for  
24 production of expert-related materials, so I  
25 hate to be like this, but what's good for the

1           goose is good for the gander, so we'll take the  
2           request under advisement.

3           MR. SCHULTZ: Okay. I appreciate that.

4           Thank you.

5           BY MR. SCHULTZ:

6           Q. Judge Arthur, can you -- if you do  
7           remember, and again, if you don't, please just say  
8           you don't remember, but if you do remember and since  
9           I don't have a copy of that document, did it -- to  
10          the best of your recollection, did it ask you to  
11          speak about any other area of expertise besides  
12          immigration law?

13          A. I don't remember. I'd need to look at the  
14          contract that I signed with the State of Louisiana.

15          Q. Okay. So have you done any preparation for  
16          the deposition today?

17          A. I have spoken to my Counsel in advance of  
18          this deposition today -- or Counsel for the State of  
19          Louisiana, rather. I apologize.

20          Q. Thank you. That was the next question I  
21          was going to ask. You read my mind. Thank you.

22          So that's Mr. St. John, correct?

23          A. That's correct.

24          Q. Okay. Did you speak to anyone else to  
25          prepare for this deposition today?



1           A.     I did not. But let me just add the caveat,  
2     Mr. Schultz, that this is what I do for a living.  
3     And so I'm constantly reviewing issues that relate to  
4     immigration law. I write a daily blog.

5           Q.     Okay. Again, that's fine. I understand  
6     there's overlap in the material. Again, I'm asking  
7     about what you did to prepare specifically for the  
8     deposition.

9           A.     I spoke to my counsel and reviewed the  
10    submissions in the matter.

11          Q.     And just to make -- just to nail it down  
12    since you added that wrinkle a moment ago, aside from  
13    Mr. St. John, have you spoken to anyone else to  
14    prepare for the deposition today?

15          A.     No, sir.

16          Q.     Okay. Have you looked at any documents to  
17    prepare for the deposition today?

18          A.     The documents that were submitted in the  
19    matter.

20          Q.     Okay. And what do you mean by the  
21    documents that were submitted in the matter? Can you  
22    clarify that more, please?

23          A.     The interim Plyler rule that was published  
24    on March 29th, 2022, my own statement, and other  
25    documents that have been submitted for the record in

1       this case. I can't really remember what they are. I  
2       had a lot.

3           Q.     So by the other documents that were  
4       submitted in this case, do you mean documents that  
5       were exchanged during the discovery process?

6           A.     I believe that's correct.

7           Q.     Okay. How many times did you meet with  
8       Mr. St. John to talk about this case -- talk about  
9       this deposition?

10          A.     Yesterday and today.

11          Q.     Okay. And how long did you meet with him  
12       yesterday?

13          A.     Couple or three hours, if I had to make a  
14       guess.

15          Q.     And how long did you meet with him today?

16          A.     About an hour. About an hour.

17          Q.     Is there -- is there any other time, aside  
18       from yesterday and today, that you met with  
19       Mr. St. John to prepare for this deposition?

20          A.     Not that I can remember.

21          Q.     Okay. Did you meet with any other lawyers  
22       from his office or any other plaintiffs' office to  
23       talk about the deposition while you prepared for it?

24          A.     I did not, sir.

25          Q.     Thank you. Did you speak to anyone else

1 about this deposition, whether or not it was to  
2 prepare for it? Have you spoken to anyone else about  
3 this deposition?

4 A. I've spoken to people in my office to let  
5 them know that I would be having this deposition  
6 today. My boss, Mark Krikorian, who is the executive  
7 director for the Center of Immigration Studies and  
8 Margaret Telford, who is our press person, about  
9 this, just to let them know that I would be having  
10 the deposition today and should not be bothered.

11 Q. Okay. Did you talk about the substance of  
12 the deposition with them?

13 A. No.

14 Q. Okay.

15 A. No.

16 Q. Now, you had mentioned that you reviewed  
17 your statements to prepare for the deposition today.  
18 By that, do you mean the expert report that you  
19 prepared?

20 A. That is correct, sir.

21 Q. Okay. So I'm going to actually mark a  
22 couple of exhibits here. And this is the  
23 technological process, so this is going to take a  
24 moment for me to make sure I get this right. So I'm  
25 going to click here. Is that right?

1           So my goal here is to basically get a  
2       couple of documents to both of you on Teams just to  
3       take a quick look at. If it doesn't work, please let  
4       me know and we can see if we can find another way to  
5       get them to you.

6           So the first one is going to be the  
7       deposition notice. We'll mark that as Exhibit No. 1.

8           (EXHIBIT NO. 1 MARKED FOR IDENTIFICATION.)

9           MR. SCHULTZ: And this is something, Scott,  
10       you've already received, just putting it in for  
11       purposes of the record.

12           This is going to be Exhibit No. 1, and  
13       Exhibit No. 2 is going to be the e-mail you sent  
14       the other day, agreeing to this as a virtual  
15       deposition. That's Exhibit No. 2.

16           (EXHIBIT NO. 2 MARKED FOR IDENTIFICATION.)

17           MR. ST. JOHN: For the record, these are  
18       not being displayed on the screen, so I'm having  
19       to rely on your representation of what they are.

20       BY MR. SCHULTZ:

21           Q. Thank you for saying that. What we're  
22       trying to do is put them in the chat so that you can  
23       actually download them from the chat. Hopefully they  
24       will appear in a moment and you can download that  
25       yourself.

1           A.     Should I be looking at this in the chat  
2     too?

3           Q.     If you could, yes.   If you could let me  
4     know if you do see them, then we can figure out our  
5     next steps.

6           A.     I can see it, I just can't -- oh, open in  
7     browser.   There we go.

8           MR. ST. JOHN:   I'm getting access denied.

9           MR. SCHULTZ:   Access denied.   Interesting.  
10     Let's try another technological trick then.  
11     Thanks.

12           Thanks for your patience.   I think we're  
13     sharing the screen now.   I'm just scrolling up  
14     so you can see the Notice of Deposition there.

15           Scott, is that something that you can see?

16           MR. ST. JOHN:   Yes.   I have no -- I don't  
17     think I have any control over it, but I can see  
18     it appears to be an AOLA-Arthur tab.

19           MR. SCHULTZ:   Yeah.   And can you see it  
20     says Defendant's Notice of Deposition?

21           MR. ST. JOHN:   Yes.

22           MR. SCHULTZ:   Okay.   So that's going to be  
23     Exhibit No. 1.   I'm sorry, I think you might  
24     just be seeing a portion.   So now you should be  
25     able to see the full front page there.   That's

1 going to be Exhibit No. 1.

2 And then Exhibit No. 2 is going to be the  
3 e-mail, Scott, that you sent confirming that  
4 this is a virtual deposition. I think you  
5 called it a remote deposition.

6 So can you see that there?

7 MR. ST. JOHN: I can.

8 BY MR. SCHULTZ:

9 Q. Okay. Thanks. And Judge Arthur, can you  
10 see those as well?

11 A. I can, Counsel.

12 Q. So then for Exhibit No. 3, we are going to  
13 put down your expert report, and obviously it's  
14 fairly long.

15 For purposes of this, I'm going to show you  
16 the front page there and we can answer any questions  
17 if we need to about whether you can see it or not.

18 (EXHIBIT NO. 3 MARKED FOR IDENTIFICATION.)

19 BY MR. ST. JOHN:

20 Q. Is that something that you can see, Judge  
21 Arthur?

22 A. I can't, sir.

23 Q. You cannot see it yet. Okay. So hopefully  
24 now you can see?

25 A. I can't -- oh, now I can.

1 Q. Okay. And does that look like the title  
2 page for your expert report?

3 A. Yes, sir.

4 Q. Okay. Thanks. And that's what you  
5 reviewed when you said you reviewed the statement,  
6 right?

7 A. That's the expert report, yes, sir.

8 Q. Okay. And can you confirm that you wrote  
9 that?

10 A. I did, Counsel.

11 Q. Okay. Thank you.

12 MR. ST. JOHN: For the record, the witness  
13 is only able to view like the top half of the  
14 first page, so we're having to rely on your  
15 representation that this is the expert report we  
16 provided.

17 BY MR. SCHULTZ:

18 Q. Thank you. Once the transcript comes in,  
19 you'll be able to see the exhibits, and that will  
20 include the entire thing at that point. If there are  
21 any questions at that point, we'll be happy to talk  
22 about that. This is all by the book, I promise.

23 So that's going to be Exhibit No. 3 then,  
24 the expert report.

25 So turning back to Judge Arthur, when you

1 created the expert report, did you communicate with  
2 anyone while you prepared it, about the preparation?

3 A. With Mr. St. John.

4 Q. Okay. And did you communicate with anyone  
5 else, aside from Mr. St. John, to help you prepare  
6 the report?

7 A. Not that I can remember, sir.

8 Q. And do you remember when you communicated  
9 with Mr. St. John about your expert report?

10 A. Before it was filed and before I signed it.

11 Q. Do you remember how many times you met with  
12 him about the expert report?

13 A. Honestly, I can't.

14 Q. Okay. Do you have some memory even if it's  
15 a range of how many hours you met with him?

16 A. It was all -- honestly, I can't remember.  
17 I'd probably say it would be less than ten.

18 Q. Less than ten hours?

19 A. It may have been more than that, though.

20 Q. Okay. So maybe less than ten hours, maybe  
21 more than ten hours; is that what you're saying?

22 A. That's what I'm saying. I do apologize,  
23 Counsel. It's been a rough year for me. My mom  
24 died. I've had a lot of stuff going on this year.

25 Q. I'm so sorry to hear that, Judge. If at



1 any point you need to take a break today, by all  
2 means, let us know.

3 A. No. No. I apologize, sir. She died in  
4 July. It's been a very busy year at my household.  
5 In fact my sewer went up this weekend, so it's --  
6 I've had a lot of stuff going on and work is also  
7 very busy.

8 Q. Well, again, I'm so sorry to hear the news  
9 about your mother. And let's just keep going, but  
10 again, if you need to pause --

11 A. Thank you. I thank you, Mr. Schultz.  
12 Thank you.

13 Q. How many hours, to the best of your memory,  
14 did you spend working on your expert report?

15 A. Probably pretty close to about ten hours.

16 Q. Ten hours. So and that's separate and  
17 above and beyond the ten hours, more or less, that  
18 you mentioned that you met with Mr. St. John, right?

19 A. That's correct. There may be some overlap  
20 there.

21 Q. Okay. And are you being paid for your work  
22 on this case?

23 A. I am, sir.

24 Q. So let's try to break that down. Are you  
25 being paid separately for the deposition and for the

1 expert report or is it a single amount that you're  
2 being paid for that?

3 A. I'm being paid a single amount, a set fee.

4 Q. And what is that set fee, please?

5 A. \$2,000.

6 Q. Okay. And that's being paid by whom?

7 A. The State of Louisiana, the Attorney  
8 General's Office, as I understand it.

9 Q. Okay. Have you received a check that  
10 you've cashed?

11 A. I have not. I just signed as a contractor  
12 with the State of Louisiana through a pretty  
13 complicated website. I'm still not even 100 percent  
14 sure that I did it correctly, but yeah, I haven't  
15 received it.

16 Q. Okay. And do you know if any of the other  
17 plaintiffs are paying you?

18 A. Nobody else is paying me.

19 Q. Okay.

20 A. Again, I get paid by the Center For  
21 Immigration Studies.

22 Q. But you also mentioned that you have a set  
23 fee of \$2,000 that's coming to you from the State of  
24 Louisiana, right?

25 A. That's correct. None of the other

1 plaintiffs in this case are paying me.

2 Q. Okay. So is the Center For Immigration  
3 Studies paying you for your work in this case?

4 A. No. The State of Louisiana is paying me  
5 for my work in this case. Immigration analysis,  
6 educating the public about immigration issues is what  
7 I get paid for by the Center For Immigration Studies.  
8 I'm the resident fellow in law and policy.

9 Q. So when you wrote the article that you did  
10 back in, I think it was October 22nd of 2022, that  
11 was something that was paid -- where the money you  
12 received was from CIS, though, right?

13 A. That's correct. I'm also a retired  
14 government annuitant.

15 Q. Right. I'm just asking you about things  
16 related to this case. Thank you for mentioning that.

17 Okay. Let's turn a little bit to your  
18 background then, and let's talk about your education  
19 specifically. And some of this is in your report,  
20 but I just want to make sure we get the contours  
21 down.

22 So did you go to college?

23 A. I did, sir.

24 Q. And where did you go to college?

25 A. I'm a graduate of the University of

1 Virginia. I spent one year at Loyola College in  
2 Baltimore, Maryland, my first year of college.

3 Q. So starting at Loyola for one year, then  
4 you moved to the University of Virginia in  
5 Charlottesville?

6 A. That is correct, sir.

7 Q. Did you graduate from the University of  
8 Virginia in Charlottesville?

9 A. In May of 1988 with a bachelor of arts in  
10 history.

11 Q. Okay. What sort of history?

12 A. My thesis was in Russian history.

13 Q. Russian.

14 A. It was on Gorbachev's alcohol policies and  
15 the impact it would have on Russian society.

16 Q. Okay. Did you have any other majors aside  
17 from history at the University of Virginia?

18 A. I had a concentration in economics.

19 Q. Okay. So let's start with the majors. Did  
20 you have any other majors?

21 A. I did not.

22 Q. Did you have any minors?

23 A. I did not.

24 Q. You said --

25 A. But I did have a concentration in

1 economics.

2 Q. Thank you. And what does that mean, a  
3 concentration?

4 A. So a lot of the work that I did with -- a  
5 lot of the studies, the classes that I took had to do  
6 with the economic ramifications of historical events,  
7 so I've taken microeconomics, macroeconomics,  
8 accounting, money and banking. The only class that I  
9 have left to receive my economics degree is  
10 statistics. I'm not sure that Charlottesville will  
11 take me back at this juncture.

12 Q. Okay. And when you say to receive your  
13 degree, do you mean an undergraduate degree?

14 A. That's correct, sir, to get another BA in  
15 economics.

16 Q. To get another BA in economics. Okay. But  
17 you don't have that, correct?

18 A. I do not, sir.

19 Q. Did you have any other minors or  
20 concentrations at University of Virginia?

21 A. I did not. Not that I'm aware of.  
22 Economics is the only one.

23 Q. Okay. You said you graduated from college.  
24 Did you have any joint degrees when you  
25 graduated from University of Virginia with your BA?

1 A. I did not, sir.

2 Q. Okay. And then from your resum , I see  
3 that you have other education. So did you go to law  
4 school after that?

5 A. I did.

6 Q. And then where did you go to law school?

7 A. I attended George Washington University,  
8 The National Law Center in Washington, D.C. in May of  
9 1992.

10 Q. So you graduated in May of '92?

11 A. Correct, sir.

12 Q. And was there any sort of a major that you  
13 had in law school?

14 A. No, sir.

15 Q. Was there any sort of a minor or a  
16 concentration that you had in law school?

17 A. No, sir.

18 Q. Did you get some sort of specialty  
19 certification when you were in law school in any  
20 area?

21 A. I did not. I did get the highest grade in  
22 my constitutional law class, but they didn't give out  
23 an award.

24 Q. Was there any substantive specialty that  
25 you took a course of study in while you were in law

1 school --

2 A. No.

3 Q. -- where you received a certificate?

4 A. No.

5 Q. When you -- you said you graduated from law  
6 school in 1992, correct?

7 A. Correct, sir.

8 Q. And when you graduated, did you receive any  
9 joint degrees?

10 A. I did not, sir.

11 Q. So it looks like -- so you graduated from  
12 college in 1988, graduated from law school in '92.  
13 Law school is usually three years. Was your law  
14 school three years?

15 A. It was, sir.

16 Q. So it looks like there's a year in the  
17 middle there that's not accounted for. Can you tell  
18 me what you did for that time?

19 A. I worked as an adjuster for the Sovereign  
20 Credit Corporation in Charlottesville, Virginia.

21 Q. What does an adjuster mean?

22 A. I would write loans, small loans for  
23 Sovereign Credit Corporation, which was a branch of  
24 Sovereign Bank NA, and I would collect on those loans  
25 as well.

1 Q. And what years or months did you have that  
2 job?

3 A. I took that job, I believe, in July of 1988  
4 and I left Sovereign directly before I moved to  
5 Washington, D.C. to go to George Washington. I  
6 actually moved to Arlington, Virginia.

7 Q. And since that was in Charlottesville, did  
8 you take any classes at the university during that  
9 year?

10 A. I did not.

11 Q. Okay. Aside from the college degree and  
12 your law school degree that you just mentioned, have  
13 you received any other academic degrees?

14 A. No academic degrees.

15 Q. Okay. Do you have a PhD?

16 A. I do not, sir.

17 Q. Okay. So is there anything else about your  
18 education experience that I haven't asked about that  
19 would be helpful for me to know about?

20 A. Not that I'm aware of.

21 Q. Okay. So let's talk about your work  
22 experience. I see that at the end of your report you  
23 have an Exhibit A.

24 So let me ask you this: Do you have a copy  
25 of your expert report in front of you?



1 A. I can get one.

2 Q. If it's -- that would be helpful. Thank  
3 you.

4 A. Very good.

5 Yeah, Counsel, by the way, it's -- I  
6 apologize, there's highlighter marks on it. Is that  
7 going to be a problem for you?

8 Q. This is just for your own reference. I'm  
9 not going to even see it.

10 A. Okay.

11 Q. Okay.

12 A. I wasn't concerned about you. I just want  
13 to -- for the deposition.

14 Q. Okay. It's not going to be in evidence.  
15 This is just to refresh your memory a little bit or  
16 to make things easier for you to follow along as I  
17 ask you questions. Okay?

18 A. That's good, Counsel.

19 Q. If we had been in the same room, I would be  
20 handing you a printed copy of it now. Since we're  
21 virtual, since you have your own copy, that makes it  
22 fairly convenient. So thank you.

23 MR. SCHULTZ: Scott, I see you're flipping.

24 Are you all set?

25 MR. ST. JOHN: I am.

1 BY MR. SCHULTZ:

2 Q. Okay. Towards the end of your actual  
3 expert report, you have a couple of exhibits, and the  
4 first one is Exhibit A. Can you flip to there,  
5 please?

6 A. I don't actually have the exhibits attached  
7 to my --

8 Q. Oh, you don't? Okay.

9 A. Yeah.

10 Q. Well, the Exhibit A that I have says  
11 "Experience" and then it lists your jobs and it goes  
12 on for about -- it goes on for two pages.

13 Do you remember writing that up?

14 A. Is that my CV? Is that my resum ?

15 Q. It says "Experience." It looks like it  
16 might have -- it looks like it's fairly similar to a  
17 resum . It has your name and address at the top, the  
18 name of your work address at the top, and says  
19 "Experience" and it lists about eight or ten items.

20 Do you remember writing that?

21 A. Actually, I do not, but I assume that I did  
22 write it.

23 Q. Okay. So let's go then and we're going to  
24 call that up and show it to you then. So this is  
25 going to be immediately after page 37 of the expert

1 report, where it says Exhibit A.

2 I'm going to share that with you. And  
3 we're just going to scroll down that slowly so you  
4 can see what we're talking about here.

5 A. Yeah, that's my CV.

6 Q. I'm just talking about the two pages here,  
7 so that's the first page I just showed you and here  
8 is the second page.

9 A. That is correct, sir.

10 Q. Okay. So does that remind you what you  
11 wrote up in Exhibit A now?

12 A. Yes, sir.

13 Q. Okay. So I'm just talking about those  
14 first two pages here.

15 Have you had a chance to look at that or do  
16 you want us to scroll through it again more slowly?

17 A. I'm familiar with it. I submit this in  
18 connection with congressional testimony and other  
19 things.

20 Q. So Exhibit A was all of your job experience  
21 since you graduated from college?

22 A. It does not include the Sovereign Credit  
23 Corporation, and I served briefly as a panelist with  
24 the Foreign Impasse Dispute Panel at the Department  
25 of Labor. I was the outside panelist.

1 Q. And how long was that for?

2 A. About eight months, I think. Maybe a year.

3 Q. And do you remember when that was, please?

4 A. The Foreign Impasse Disputes Panel is a  
5 panel under the Department of Labor.

6 Q. I'm sorry, I'm just asking what years you  
7 worked there.

8 A. Oh, it was after I had retired from the  
9 government. I believe it was from the fall of 20 --

10 MR. ST. JOHN: Mr. Arthur, if you don't  
11 remember, it's okay.

12 THE WITNESS: I really don't remember, but  
13 it probably would have been from the fall of  
14 20 -- I've got to think about this for a second,  
15 2017, maybe 2018, and we only ever convened once  
16 and that was at the beginning of the panel.

17 BY MR. SCHULTZ:

18 Q. Okay. Thank you. And what was -- now to  
19 go back to what you were saying a minute ago, what  
20 was that involving? What was the substance of the  
21 work that the panel did?

22 A. It involved disputes by foreign service  
23 officers abroad with respect to employment issues.

24 Q. Okay. Thank you. And aside from that, is  
25 there anything else that you have worked on since

1 graduating from college that's not included in  
2 Exhibit A here?

3 A. I was -- I went from the -- after I  
4 graduated college, I worked on the -- I was an honors  
5 attorney with the attorney general's honor class and  
6 I went to EOIR and then INS, and not that I'm aware  
7 of.

8 Q. You said you went to EOIR and then --

9 A. The INS.

10 Q. -- the INS. Then you said not that you're  
11 aware of?

12 A. Not that I'm aware of.

13 Q. So just to make sure that we're on the same  
14 page, aside from what's listed in those two pages on  
15 Exhibit A, and adding to that your time at the  
16 Sovereign Credit Union in Charlottesville, and adding  
17 to that your time on the panel that you just  
18 mentioned, is there any other job experience you have  
19 since graduating from college?

20 A. Not that I can remember.

21 Q. Thank you. Let's go back to your education  
22 for a moment. In any of your education at the  
23 University of Virginia or at George Washington  
24 University, did you study expenditures for education  
25 in state and local budgets?

1 A. I did not.

2 Q. Okay. And for any of your education at the  
3 University of Virginia or at George Washington  
4 University, did you study Medicaid or children's  
5 health insurance programs or emergency medical  
6 services in state and local budgets?

7 A. I did not. I'm actually married to a  
8 surgeon who is currently getting her masters in  
9 health administration from the University of North  
10 Carolina and she bounces a lot of things off of me in  
11 connection with that, in connection with Medicare and  
12 things like that.

13 Q. Okay. So thank you for adding that, but  
14 I'm going to repeat my question because I didn't get  
15 a clear answer.

16 In any of your education at the University  
17 of Virginia or at George Washington University, did  
18 you study Medicaid, did you study children's health  
19 insurance programs, or emergency medical services in  
20 state and local budgets?

21 A. I did not.

22 Q. Thank you. And in any of your education at  
23 the University of Virginia or at George Washington  
24 University, did you study expenditures for  
25 supplemental nutrition assistance program or the

1 temporary assistance for needy families in  
2 expenditures in state and local budgets?

3 A. I did not.

4 Q. Thank you. I'll turn to your work  
5 experience for a moment. So let me just give you a  
6 definition upfront to make sure we're on the same  
7 page. I'm going refer to Exhibit A, plus the credit  
8 union and plus the foreign panel that you mentioned.  
9 Okay? I'm going to call that, just for purposes of  
10 this question, Exhibit A, plus credit union, plus  
11 panel. Okay?

12 A. Very good.

13 Q. Okay. So in any of the work experiences  
14 that you discussed in Exhibit A, plus the credit  
15 union, plus the panel, did you work on expenditures  
16 for education in state and local budgets?

17 A. I assume that this includes my work at the  
18 Center For Immigration Studies, because of course we  
19 do look at the impacts of budgetary issues on states  
20 and localities and we also look at welfare programs  
21 in the course of that.

22 We often write about means-tested public  
23 benefits use in the United States.

24 Q. Okay.

25 A. Under the American -- usually based upon

1 information provided by the Census Bureau's American  
2 community documents.

3 Q. Okay. So then let me rephrase the question  
4 a little bit and we'll circle back if we can.

5 A. Okay.

6 Q. So in any of the work experiences that you  
7 discussed in your expert report and the two pages  
8 after Exhibit A, plus the credit union, plus the  
9 foreign panel, not including CIS, did you work for  
10 expenditures in state and local budgets?

11 A. I did not.

12 Q. And in any of the work experiences that you  
13 discussed in your expert report and the two pages  
14 after Exhibit A, plus the Sovereign Credit Union,  
15 plus the foreign panel, but not including CIS, did  
16 you work on Medicaid, children on health insurance  
17 programs, or emergency medical services in state and  
18 local budgets?

19 A. It may have come up during my time on the  
20 House Judiciary Committee. We certainly looked at  
21 issues like that particularly with respect to the  
22 implementation of PRWORA.

23 Q. Implementation of what?

24 A. Personal Responsibility of Work Opportunity  
25 Act of 1996, PRWORA.



1 Q. Okay. Thank you. And that was in '96,  
2 1996, correct?

3 A. When I was at the judiciary committee?

4 Q. You just said that the law was passed in  
5 1996.

6 A. Yeah, the law was passed in 1996.

7 Q. And when would you have worked on those  
8 issues then?

9 A. When I was with the House Judiciary  
10 Committee. I served there from September of 2001  
11 until November of 2006.

12 Q. Now, you were a little bit vague, so let me  
13 try and drill it down.

14 You said you may have worked on it. Are  
15 you saying that you may have or do you have a firm  
16 memory that you did?

17 A. We generally addressed a lot of welfare  
18 issues with the oversight counsel for immigration for  
19 the House Judiciary Committee during the period of  
20 time that judiciary had jurisdiction over all  
21 immigration-related issues. And we certainly looked  
22 at means-tested public benefits during that time.

23 Q. Okay. Thank you. Sorry.

24 Okay. So again, let's move forward.

25 Again, using the phrasing that I've been using, in

1 any of the work experience that you discussed in your  
2 expert report and the two pages after Exhibit A, plus  
3 the credit union, plus the foreign board, but not  
4 including CIS, did you work on expenditures for  
5 supplemental nutrition assistance program or  
6 temporary assistance to needy family expenditures in  
7 state and local budgets?

8 MR. ST. JOHN: Object to form.

9 THE WITNESS: Again, we would have looked  
10 at that in conjunction with the work that we did  
11 looking at means-tested public benefits  
12 generally.

13 MR. SCHULTZ: Thank you. Just on  
14 logistics, I'm getting a bit of feedback or some  
15 rustling noises. I'm not sure where it's coming  
16 from. If folks are rustling, if you can please  
17 stop. It may be interfere a little bit with the  
18 audio. But turning to Ms. Marsh, have you been  
19 able to hear and take down everything clear  
20 enough?

21 COURT REPORTER: Yes, I have. I was  
22 hearing the rustling too, but it's fine.

23 BY MR. SCHULTZ:

24 Q. Okay. So you wrote in your expert report  
25 that you testified in Congress 11 times; is that

1 right?

2 A. That's correct, sir.

3 Q. Have you ever testified in Congress about  
4 the IFR?

5 A. I'm trying to think if the IFR ever came up  
6 during any of the course of my testimony. I can't  
7 say for certain.

8 MR. ST. JOHN: I would object. It's public  
9 record. You've had a chance to review his  
10 testimony before Congress and it shouldn't be a  
11 memory game.

12 BY MR. SCHULTZ:

13 Q. Okay. Have you ever testified in Congress  
14 about expenditures for education in state and local  
15 budgets?

16 MR. ST. JOHN: Same objection.

17 THE WITNESS: I believe that expenditures  
18 in state and local budgets came up during  
19 testimony that I gave in Arizona in August.

20 BY MR. SCHULTZ:

21 Q. You gave in Arizona in August. So that was  
22 not for Congress, that was for Arizona?

23 A. No. No. That was appeal hearing for the  
24 house oversight committee, I believe.

25 Q. The house oversight committee. Thank you.

1 What was the date for that one, please?

2 A. It was in August of this year. Trying to  
3 think. Was it in August? My CV should show the  
4 date. I apologize again. It was a rough summer for  
5 me, sir.

6 Q. Okay. Thank you. Just one moment here,  
7 please.

8 I think -- Judge Arthur, can you hear me  
9 again now?

10 A. I can.

11 Q. Okay. Thank you. So let me just make sure  
12 I got the answer right. There was some crosstalk  
13 that we had from Mr. St. John, so I want to make sure  
14 I have a clean answer from you.

15 Have you ever testified in Congress about  
16 the IFR?

17 MR. ST. JOHN: Objection. His testimony is  
18 public record. This shouldn't be a memory game.

19 You can answer.

20 MR. SCHULTZ: Mr. St. John, your objection  
21 is noted, but I would ask you to please minimize  
22 the speaking. Noting your objection for the  
23 record I think should be sufficient.

24 BY MR. SCHULTZ:

25 Q. Judge Arthur, you can answer that question

1 now, please. Thank you.

2 A. It may have come up in the course of  
3 questioning. And for what it's worth, I may have  
4 included it in my testimony. I can't remember  
5 whether I did or not.

6 Q. Okay. So --

7 A. By the way, when I say "my testimony," I  
8 mean my written testimony.

9 Q. Does that mean your written testimony to  
10 Congress?

11 A. That's correct, sir.

12 Q. Okay. Thank you. Do you know which set of  
13 testimony that is?

14 A. It would have been something after the IFR.  
15 Again, it may have been included in my testimony. My  
16 testimony generally runs a little long, and I try to  
17 cover the subject area as much as possible. I  
18 believe that it's my duty to inform the Congress, to  
19 the degree that I can, as exhaustively as I can.

20 Q. Have you ever testified in Congress about  
21 Medicaid or children's health insurance programs or  
22 emergency medical services expenditures in local or  
23 state governments?

24 MR. ST. JOHN: Same objection.

25 THE WITNESS: I believe that the subject of

1 the hearing in Arizona was on the cost of  
2 communities and there may have been testimony at  
3 that time. When you give Congressional  
4 testimony, you're very much in the moment when  
5 you're doing it.

6 BY MR. SCHULTZ:

7 Q. Okay. Thank you. And have you ever  
8 testified in Congress about supplemental nutrition  
9 assistance program or temporary assistance for needy  
10 family expenditures in state or local budgets?

11 MR. ST. JOHN: Same objection.

12 THE WITNESS: Again, if it had come up, it  
13 would have been in the course of that testimony  
14 in Arizona.

15 BY MR. SCHULTZ:

16 Q. Okay. Thank you. Please tell me the  
17 names -- well, have you ever been an expert in any  
18 litigation ever before this case?

19 A. Before this case, no.

20 Q. Okay. Have you testified as an expert in  
21 this case before now?

22 A. I was deposed previously.

23 Q. Were you deposed as an expert in this case  
24 previously?

25 MR. ST. JOHN: Objection. Question of law.

1 THE WITNESS: I was deposed as a 30(b)(6)  
2 witness the last time, but there were questions  
3 that did relate to issues of law in the course  
4 of that.

5 BY MR. SCHULTZ:

6 Q. Outside the 30(b)(6) deposition in this  
7 case and the current deposition, have you ever been  
8 an expert in court in any litigation ever?

9 A. I am an expert witness right now in  
10 litigation in a FOIA case.

11 Q. Can you spell that, please?

12 A. FOIA? F-O-I-A, Freedom of Information Act.

13 Q. Thank you. And do you know the case number  
14 or the location of that, please?

15 A. I don't even -- I can't even remember the  
16 header for that case.

17 Q. Do you know who hired you for that case?

18 A. I was hired, I believe, by the Heritage  
19 Foundation for that one.

20 Q. Is that case ongoing?

21 A. It is.

22 Q. Okay. And I'm going to request you please  
23 send us at least the caption for that case by close  
24 of business tomorrow, please.

25 MR. ST. JOHN: Again, we'll take that

1 request under advisement.

2 MR. SCHULTZ: Thank you. We can follow up  
3 in writing. Thank you, Scott.

4 BY MR. SCHULTZ:

5 Q. So I'd like to talk to you about a couple  
6 of odds and ends here. So I'm going to just mention  
7 something that you talked about as part of your  
8 background.

9 You said in your expert report, you wrote  
10 something that was called President Trump's Travel  
11 Orders in National Security, and that was in  
12 publication called Migration and Solidarity in 2020;  
13 is that correct?

14 A. That's correct.

15 Q. Was that a foreign publication?

16 A. It is a publication that is jointly done  
17 foreign and in the United States, which I think is  
18 why there's a split, and I presented on that at Banz  
19 Castle in Bavaria at the time that the paper was  
20 presented.

21 Q. And you mentioned that in paragraph ten,  
22 just for the record; is that right, if you remember?

23 A. As I remember. I can take a look at that  
24 part of my testimony.

25 Q. If you want to take a moment now, that's



1 fine to look at it.

2 A. Sure.

3 Q. There's another publication in that same  
4 paragraph that I would like to ask you about.

5 A. Very good.

6 Q. It's at paragraph ten. So let me know when  
7 you see that, please.

8 A. I see it, Counsel.

9 Q. How did that publication come about, the  
10 one that you just mentioned in Migration and  
11 Solidarity in 2020?

12 A. I was invited to present at the panel. It  
13 is an interesting panel. It is an interesting panel.  
14 It is under the aegis of the Catholic church. And  
15 the location itself is owned by the CDU, CSU, which  
16 at the time was the political party of Chancellor  
17 Angela Merkel.

18 Q. Okay. And they reached out to you; is that  
19 right?

20 A. They did.

21 Q. Okay. And is that an article or a book?

22 A. It's an article.

23 Q. And did you write that in English or in a  
24 different language?

25 A. I wrote it in English. I wouldn't trust my

1 German.

2 Q. Do you speak German?

3 A. Only a little.

4 Q. I see. Thank you. In that same paragraph,  
5 there's another publication, and it's called the  
6 Oversize Role of Title 42 in U.S. Southwest Border  
7 Security. It says it's published in LIMEN,  
8 L-I-M-E-N, and the Journal of Hungarian Migration  
9 Institute, Volume 5, in 2022/1.

10 Do you see that?

11 A. I do.

12 Q. How did what -- first of all, was that  
13 published in Hungary?

14 A. It was published in Hungary. I believe  
15 it's available in the United States.

16 Q. And was that published in English or in  
17 Magyar or Hungarian?

18 A. It was published in English.

19 Q. Okay. And how did that come about?

20 A. I was approached by the Hungarian Migration  
21 Institute to present or to offer them a paper on it.

22 Q. And what was your thesis there?

23 A. It had to do with the Oversized Role of  
24 Title 42 in security, and it explains that during the  
25 period of time the Title 42 was in existence, that

1 basically provided all immigration enforcement that  
2 there was in -- at the time it explained how it  
3 evolved from the Trump administration, how it was  
4 applied in the Biden administration.

5 Q. Title 42, thank you. Turning to the  
6 previous document that -- turning to the previous  
7 publication I just mentioned, the one that was  
8 published in -- published in the German publication,  
9 Migration and Solidarity.

10 Can you tell me the thesis of that article,  
11 please?

12 A. Yeah, it actually discussed the legislative  
13 history of the Trump travel orders from the executive  
14 order through the presidential proclamation -- I  
15 think it was 9645 -- and through the litigation in  
16 Trump versus Hawaii.

17 Q. Okay. Turn a little bit now to the  
18 substance of your report a little bit more. So you  
19 start off the report on page one with your education,  
20 experience, and expertise, and that goes on to page  
21 two; is that right?

22 A. That is correct.

23 Q. Okay. And then you go on to your -- on  
24 page two you go on to your background, and on page  
25 three -- on page two you also begin discussing the

1 general process for asylum; is that right?

2 A. That's correct, Counsel.

3 Q. And on page four -- I'm sorry, page six,  
4 you start going through statutory withholding of  
5 removal and Convention Against Torture. Do you see  
6 that on page six?

7 A. Yes, I do, Counsel.

8 Q. And on page seven you discuss parole, and  
9 that goes on for about a page or so until the top of  
10 page nine, right?

11 A. Correct. Yes.

12 Q. And then on page nine --

13 A. Actually goes down to page ten, I think.

14 Q. Top of page nine says transfer --

15 A. I'm sorry. Never mind. You're right,  
16 transfer of a specific -- yes, sir.

17 Q. Page nine at the top is transfer of  
18 specific functions to the Department of Homeland  
19 Security, correct?

20 A. Correct, Counsel. I apologize. I wear  
21 bifocals, so when I look over, I can't see the text.

22 Q. That's okay. If you have trouble seeing  
23 the text, please just let me know. We want to make  
24 sure that you have a full chance to look at anything  
25 that we're talking about. Okay?

1 A. Very good.

2 Q. Okay. Thank you. So just to be clear,  
3 everything that basically covers pages one through  
4 the -- I'm sorry.

5 Then page ten has kind of a large font  
6 header that says "The impact of Biden administration  
7 policies on migration."

8 Do you see that on page ten?

9 A. Yeah. I realize there's a typo on that.

10 Q. What is the typo?

11 A. It's in administration. Yeah, there's an  
12 extra I in administration.

13 Q. Okay. So this question I have here is on  
14 everything on pages one through nine then: Nothing  
15 there deals -- addresses the IFR, does it?

16 A. No, that's background, Counsel.

17 Q. Okay. Okay. So then let me just ask about  
18 something else that I saw in your report in a few  
19 places, but this will go back to your experience a  
20 little bit.

21 You were an immigration judge for how long,  
22 sir?

23 A. Eight years. Eight years, a little bit  
24 longer.

25 Q. Okay. And in your experience, does every

1 immigration judge grant asylum at the same rate as  
2 every other immigration judge?

3 A. They do not.

4 Q. So would you say that there's variation  
5 between the grant rate of asylum between immigration  
6 judges?

7 A. There are.

8 Q. Do you have any idea what causes that  
9 variation in grant rates?

10 A. Yeah, actually, in fact, I've written and  
11 talked a lot about this. I've appeared four times  
12 before Congress with respect to that, and part of it  
13 is the interpretation of the law. Part of it is the  
14 nationalities of the respondents in the case. Part  
15 of it is the claims themselves.

16 As I often explain, that's why it's good to  
17 have the appellate system, because you can smooth out  
18 those variations in the grant rate.

19 Q. You said nationalities. Why do  
20 nationalities matter?

21 A. Nationalities matter because respondents,  
22 applicants from different countries sometimes have  
23 more meritorious claims. I've actually adjudicated  
24 asylum claims from the United Kingdom, and I've  
25 adjudicated asylum claims from China. There's a

1 variation amongst asylum grant rates based upon  
2 nationality.

3 Things are worse in certain places in the  
4 world. Certain asylum claims are bolstered by  
5 activity in foreign countries dependent on the  
6 country.

7 Q. You also said -- can you say those last  
8 three words again, please?

9 A. Dependent on the country. It was actually  
10 four.

11 Q. Thank you. And you also said there's  
12 variations due to the claims themselves. What did  
13 you mean by that?

14 A. So not all asylum claims are the same.  
15 Certain asylum claims are pretty straightforward  
16 based upon race, religion, nationality, and political  
17 opinion.

18 In countries in which there is a  
19 demonstration of persecution in those countries, it  
20 ties directly into the claim. One of the  
21 responsibilities of every immigration judge is to  
22 apply the facts in the country to the law and also to  
23 look at country conditions reports in those  
24 countries.

25 Q. Okay. Are there any other areas that you

1 can think of that might change variation?

2 A. From judge to judge or country to country?

3 Q. I'm thinking judge to judge.

4 A. From judge to judge, it all depends on  
5 whether you are in a detained court or a nondetained  
6 court.

7 I was in a detained court. And for that  
8 reason, I had jurisdiction over the Federal  
9 Correctional Institution at Shannon, Pennsylvania,  
10 the Federal Correctional Institution at Allenwood,  
11 Pennsylvania, and I also had jurisdiction over the  
12 Pennsylvania state prison system.

13 Many of those individuals have been  
14 convicted of crimes that barred them from receiving  
15 asylum. So the asylum rate would be a lot lower.

16 Many of the people that I heard claims from  
17 were barred from asylum but they filed asylum claims  
18 in order to seek statutory withholding under section  
19 241(b)3 of the INA, withholding under the Convention  
20 Against Torture and Convention Against Torture.

21 Q. Would you say that variation between  
22 circuit court rulings could also lead to variations  
23 of immigration judge asylum grant rates?

24 A. It does. Again, this is a point that I've  
25 testified about in the past. I've been a trial



1 attorney in the 9th circuit and I was a trial  
2 attorney in the 4th circuit. When I was in  
3 headquarters, I had to deal with all of the circuits,  
4 except, of course, for the DC circuit, which doesn't  
5 have any jurisdiction over immigration cases, and the  
6 federal circuit because they don't have any either.

7 But yeah, there's variations with respect  
8 to the law, the interpretations of section 208 of the  
9 INA.

10 Q. Okay. Thank you. So you mentioned that  
11 you work at the Center For Immigration Studies,  
12 right?

13 A. I do, sir.

14 Q. Do you know David North?

15 A. I do know David North. I actually -- David  
16 has been working remotely. I can't really say how  
17 many times I've seen him or seen him in recent years,  
18 but I do know who David North is.

19 Q. And he writes for the Center For  
20 Immigration Study's website. He writes a blog or  
21 various posts there as well, right?

22 A. Correct, sir.

23 Q. Have you read his posts?

24 A. I actually -- most of the posts that he  
25 writes involve things that don't really interest me.

1 And I'd like to say that I read all of the stuff on  
2 our website, but I don't. I do get around to reading  
3 it from time to time.

4 Q. Do you know if you read something he wrote  
5 on November 10th of this year?

6 A. Could you tell me what the subject of it  
7 was? He might have written more than one thing on  
8 November 10th.

9 Q. Sure. It says, "TRAC Offers Explanation on  
10 Differing Asylum Approval Ratings."

11 A. I did actually read that one.

12 Q. And --

13 A. David had sent that to me ahead of time to  
14 take a look at.

15 Q. So there's a sentence there that I'll read  
16 to you where he wrote about, "A variable stew of  
17 factors that led to the actual decisions in  
18 individual cases and to the ranges in approval  
19 rates."

20 So did you hear what I said there? I'm  
21 happy to repeat it.

22 A. I did, Counsel.

23 Q. So do you agree with Mr. North that there's  
24 a quote, "Variable stew of factors" that can, quote,  
25 "lead to the actual decisions in individual cases and

1 to the ranges in approval rates"?

2 A. It's not the language that I would use, but  
3 again, I'd have to take a look at the document. I  
4 read a lot. I write a lot. That one, I would agree  
5 that there are a number of different factors to  
6 create a variation of the grant rates.

7 Q. Give me a moment here. Please. Thanks.

8 Let's turn back to your report and go to --  
9 actually, it's 11:12. Everyone doing okay? We've  
10 been on the record about an hour and a quarter.

11 MR. ST. JOHN: Why don't we take like five  
12 minutes?

13 MR. SCHULTZ: I'll put down 11:13 as the  
14 stop time.

15 (RECESS TAKEN.)

16 MR. SCHULTZ: I have 11:21. We are back on  
17 the record.

18 BY MR. SCHULTZ:

19 Q. Just a couple of quick follow-ups, Judge  
20 Arthur. So do you know why Mr. North might have sent  
21 you that column since you're not normally writing  
22 overlapping areas of work?

23 A. Yeah, we share columns if it is something  
24 that is generally within somebody's area of  
25 expertise.

1 Q. Okay. Does that mean that you thought  
2 this -- does that mean you're assuming he thought  
3 this was in your area of expertise? Is that why you  
4 said that just now?

5 A. Well, generally we like to get one  
6 another's opinions about things that we write.

7 Q. Did he send this to you before he wrote it  
8 or before he published it or after he published it?

9 A. He sent it to me before he published it,  
10 before it was sent for review and publication.

11 Q. Okay. Did you have any input into that or  
12 did you make suggestions that he took?

13 A. I disagreed with a lot of the statements  
14 that he made, but nobody at the center is --  
15 everybody at the center is free to write what they  
16 want with their own opinions.

17 Q. What did you disagree with that he wrote?

18 A. I'd have to take a look at the whole thing.  
19 I remember reading it. There was -- he made  
20 conclusions with respect to immigration, differences  
21 amongst immigration judge determinations. If I had a  
22 chance to read the whole thing, I'd remember. Again,  
23 we're a busy think tank. Things have been busy of  
24 late.

25 Q. But you do remember that you disagreed with

1 some of the stuff?

2 A. I did.

3 Q. Okay. But not with everything that he  
4 wrote?

5 A. I can't remember what I agreed with and  
6 what I didn't agree with.

7 Q. A moment ago you said that you disagreed  
8 with some of the language that he used, but you  
9 agreed that there would be multiple factors that go  
10 into variation between immigration judges. That's  
11 what you testified to here a few minutes ago.

12 A. That's correct. Used the word "stew," but  
13 we write colloquially because we write for public  
14 consumption.

15 Q. Okay. And just to turn back to the German  
16 publication for a minute, you said that the  
17 publication came about when they reached out to you.

18 Do you know how you might have been on a  
19 list of folks that the German publishers, how they  
20 knew about you?

21 A. I have no idea. I may have been referred  
22 by someone with whom I've worked before in the past.

23 Q. Okay. Do you remember who?

24 A. I believe that it was Michael Dougherty.

25 Q. Michael Dougherty, is that

1 D-o-u-g-h-e-r-t-y?

2 A. That's correct. Again, it's been a while.  
3 I think that's how they got in touch with me.

4 Q. Okay. Thank you.

5 Let's turn back to your report here, and  
6 I'm going to ask you to turn to paragraph 36, which  
7 is on page eight, if you can, please.

8 MR. SCHULTZ: And Scott, I didn't ask you,  
9 but do you have a copy of that expert report  
10 from your own expert there in front of you?

11 MR. ST. JOHN: I do. And I think, like  
12 Mr. Arthur, I don't have all of the attachments.  
13 I've got kind of the core report.

14 MR. SCHULTZ: Okay. That's fine. These  
15 questions I'm going to have now are of the core  
16 report. I just want to make sure that you have  
17 that in front of you. Right?

18 MR. ST. JOHN: I do.

19 MR. SCHULTZ: Thank you so much, Scott.

20 BY MR. SCHULTZ:

21 Q. Judge Arthur, let's turn to paragraph 36.  
22 That's again on page eight. And you wrote there,  
23 quote, "But during the Biden administration, DHS has  
24 'persistently underutilized its existing resources'  
25 and further sought 'a dramatic reduction in

1 detention, bed capacity' despite surging numbers of  
2 migrants."

3 Did I read that correctly?

4 A. That's correct, Counsel.

5 Q. So let me ask you a few questions about  
6 that then.

7 Does the IFR itself actually call for  
8 having the country, quote, "persistently underutilize  
9 its existing resources"?

10 A. With respect to expanding the opportunities  
11 for parole for individuals who are subjects to  
12 credible fear determinations, before those credible  
13 fear determinations, yes, it does, in my opinion.

14 Q. I don't mean to cut you off. Are you all  
15 set there?

16 A. Yes, sir.

17 Q. Okay. So you see parole as a resource; is  
18 that what you're saying?

19 A. Parole is not a resource. The case in  
20 question was Texas versus United States. The IFR  
21 changes the parole standard for aliens who are  
22 subject to credible fear determinations to extended  
23 to instances where detention is not in the interest  
24 of the United States.

25 That same "detention is not in the interest

1 of the United States" language, it has been used a  
2 lot during the Biden administration to release aliens  
3 where there is a lack of detention space,  
4 notwithstanding the fact there still is detention  
5 space.

6 I believe that that statement was included  
7 in the Supreme Court's brief in Texas versus Biden.  
8 I also believe that the -- that that regulation is  
9 ultra vires.

10 Q. Okay. Let's stick with the resources. So  
11 it's not the parole that you're saying is a resource  
12 so much as you're saying it's unused detention space;  
13 is that what you're calling a resource?

14 A. That's correct.

15 Q. Okay. Thank you. So let's go a little bit  
16 further there. Are you aware of any legal  
17 limitations on detaining families in the United  
18 States?

19 A. I am. The Florida settlement agreement in  
20 a case called Flores versus Lynch, there was a court  
21 order that was issued in August of 2015 by Judge  
22 Dolly Gee, who is district court judge in California,  
23 and that was affirmed in part but not in whole by the  
24 9th circuit in July of 2016.

25 But I would note that even after that,



1       there was family detention that was used in Karnes  
2       and Dilly. In fact, when I was an immigration judge,  
3       I had jurisdiction over a family immigration court  
4       that was prior to Flores -- family detention center.

5           Q.     So you are aware of some limits that the  
6       law imposes on detaining families, correct?

7           A.     I am, Counsel.

8           MR. ST. JOHN: Objection. Calls for -- you  
9       can answer.

10          THE WITNESS: I am, Counsel.

11       BY MR. SCHULTZ:

12          Q.     Thank you. So even if there are physical  
13       unused detention spaces, sometimes the government is  
14       not allowed to use that given these limits on  
15       detaining families, right?

16          MR. ST. JOHN: Objection. Calls for a  
17       legal conclusion.

18          You can answer.

19          THE WITNESS: When I visited, I believe it  
20       was either Karnes or Dilly --

21       BY MR. SCHULTZ:

22          Q.     I'm sorry, just -- given the objection,  
23       given the speaking objection there, let me ask the  
24       question. And then Scott, your objection is noted,  
25       and then let's get a clean record here on this.

1 Okay?

2 So even if the United States has detention  
3 space that's physical, that's unused, there is still  
4 legal limits that can prevent the United States from  
5 using that, given the limits on family detention,  
6 right?

7 Scott, your objection is noted?

8 MR. ST. JOHN: Objection. Calls for a  
9 legal conclusion. Vague and misleading.

10 BY MR. SCHULTZ:

11 Q. You can answer.

12 A. I'm sorry?

13 Q. You can answer the question.

14 A. I apologize. I thought you said "good  
15 answer," which sort of surprised me.

16 With respect to that, again, the federal  
17 government has the opportunity to detain families  
18 during that 20-day period when the credible fear  
19 determination can be made.

20 And from my personal experience visiting  
21 family detention, they were able to utilize that  
22 space; however, the Biden administration made the  
23 decision not to detain alien families and I believe  
24 that that was effective as of December 2021.

25 Q. I'm not sure that answered my question, so

1 I'm going to try once more.

2 Even if there's unused detention space, if  
3 the government -- if the courts say it's not legal  
4 for the government to use it, the government can't  
5 use it, right?

6 MR. ST. JOHN: Objection. Calls for  
7 testimony about a question of law. Vague.  
8 Misleading.

9 THE WITNESS: They can use it up to that  
10 20-day period. But yes, thereafter, they  
11 cannot. With respect to the children, the 9th  
12 circuit decision in Flores versus Lynch, I  
13 believe it was, said that they could continue to  
14 detain the adults in the family unit thereafter.

15 BY MR. SCHULTZ:

16 Q. So you testified you have a law degree,  
17 right, Judge?

18 A. I do, sir.

19 Q. And you told me before that you're being  
20 paid for your expertise in part -- I'm sorry, you  
21 told me before that you're being paid by the State of  
22 Louisiana for your expertise in immigration law,  
23 right?

24 A. That's correct.

25 MR. ST. JOHN: Objection. Asked and

1           answered.

2           BY MR. SCHULTZ:

3           Q.     There was crosstalk there.

4           A.     That's correct, Counsel. I didn't hear  
5           what you said. I apologize.

6           Q.     Thank you. All I said was there was  
7           crosstalk, so I waited for you to answer, which you  
8           just did. So thank you.

9                     Your report is full of legal conclusions,  
10           isn't it?

11           A.     There are applications of facts to law  
12           therein.

13           Q.     Okay. So when I'm asking you to talk about  
14           something that's applying to law as something you  
15           said, I think that's fair game here. So thank you.

16                     So let's move over to paragraph 42 of your  
17           report. That's going to be on page ten. And tell me  
18           once you have that open, if you can, please.

19           A.     I do, Counsel.

20           Q.     Thank you. So in paragraph 42, it says, in  
21           paragraph 42 you wrote, "I believe Congress  
22           specifically gave jurisdiction over asylum  
23           applications filed by UACs to AOs because Congress  
24           recognized that those AOs otherwise lacked the power  
25           to adjudicate such asylum applications filed by

1 UACs."

2 Did I read those words correctly?

3 A. That is correct, Counsel.

4 Q. Okay. And by UAC, do you mean  
5 unaccompanied children or sometimes folks use that to  
6 mean unaccompanied alien children?

7 A. Unaccompanied alien children is the  
8 statutory definition. And AO is the asylum officer.

9 Q. Thank you. And the TVPRA you talked about  
10 in that same paragraph is the Trafficking Victims  
11 Protection Reauthorization Act, correct?

12 A. Yes, sir. The William Wilberforce  
13 Trafficking Victims Protection Reauthorization Act of  
14 2008.

15 Q. So when you talking in that paragraph about  
16 your belief, can you tell me what evidence you have  
17 for that belief, please?

18 A. Yes. I was one of the drafters of section  
19 451(b) of the INA, which specifically delegated as of  
20 March 1, 2003, certain responsibilities that had  
21 previously been held by the former INS and vis-a-vis  
22 the former or the executive office for immigration  
23 review.

24 And my conclusion is the Congress  
25 determined, having done legislative drafting in the

1 past, that they had to carve out that exception to  
2 exclude children from the credible fear process in  
3 Section 235(b)(1) of the INA. When I say INA, I mean  
4 the Immigration and Nationality Act.

5 Q. Thank you. Have you ever been elected to  
6 Congress, sir?

7 A. Never.

8 Q. And were you in Congress when that change  
9 that you mentioned in paragraph ten was made?

10 A. I was not.

11 Q. And you said you drafted Section 451(b) of  
12 the INA; is that right?

13 A. I assisted as a staffer in the drafting of  
14 it. In Congress, we differentiate between drafting  
15 of legislation and the actual presentation of  
16 legislation, so I did that for the House Judiciary  
17 Committee.

18 Q. Is section 451(b) of the INA the same as  
19 8USC, Section 1225(b)(3)(c)?

20 A. It is not, Counsel.

21 Q. So when you said that you had drafted a  
22 section of the INA when you were in Congress, that  
23 has nothing to do with what you wrote about in  
24 paragraph ten here, right?

25 A. It does, because section 451(b) of the INA

1 designated certain responsibilities over certain  
2 cases. And I concluded that that was a necessary  
3 carveout to make clear that those children, rather  
4 than going to immigration judges under section  
5 235(b)(2) of the INA or 235(b)(1) of the INA, that the  
6 primary jurisdiction over the asylum claims should be  
7 retained by the asylum officers.

8 Q. I misspoke a moment ago. I said page  
9 ten -- I said paragraph ten, I should have said page  
10 ten. I'm referring to paragraph 42.

11 Is that your understanding still that I'm  
12 talking about paragraph 42?

13 A. That is correct. I will note also,  
14 Counsel, that when I was with the judiciary  
15 committee, I had met with individuals who were in the  
16 process of drafting what would become the William  
17 Wilberforce Act, though we did not discuss that  
18 particular issue.

19 Q. Did any member of Congress ever tell you  
20 that it was their understanding -- that they have the  
21 same understanding as what you put in paragraph 42?

22 A. Not that I'm aware of.

23 Q. Not that you're aware of or no?

24 A. I would remember it, but I can't tell you  
25 dispositively I've never had that discussion.

1 Q. Okay.

2 A. I might have heard reference to it in  
3 testimony. So if the question is, did any member of  
4 Congress ever speak to me directly? The answer would  
5 probably be no.

6 Q. And do you know what testimony that might  
7 have been contained in?

8 A. There was testimony in the Senate, and I  
9 believe that it was a panel that included Joseph  
10 Edlow, who would have been the prior head of USCIS.

11 Q. Did you cite to that in paragraph 42 of  
12 your expert report?

13 A. I did not.

14 Q. Why not?

15 A. Because, again, I'm -- I just want to  
16 answer your question as fully as possible. I don't  
17 have an independent recollection of it.

18 I do know that Ms. Feinstein said in -- the  
19 late senator, Dianne Feinstein, of California, had  
20 spoken about it and I can't remember whether there  
21 was a discussion about it or not.

22 Q. Okay. When you said she spoke about it, do  
23 you remember what context?

24 A. I do not. I remember that she was  
25 specifically referencing the TBPRA in that and that



1       there had been discussion of that particular act  
2       during the hearing.

3             Q.     But you have no citation to that, do you?

4             A.     No, I don't. I can't even tell you what  
5       month or year that was.

6             Q.     Thank you. So let's go to another  
7       paragraph here. Let's go to paragraph 49. And this  
8       is the entire paragraph. I'm going to read it out  
9       loud.

10            "The resulting Biden administration  
11       policies, including the asylum IFR, are perceived  
12       around the world as an announcement that the U.S.  
13       borders are now open."

14            Did I read that correctly?

15            A.     That is correct, Counsel.

16            Q.     You don't have any citation to that  
17       paragraph there, do you? That's a yes-or-no  
18       question.

19            MR. ST. JOHN: You can answer it in the  
20       form you choose, Mr. Arthur.

21            THE WITNESS: It's generally accepted that  
22       the Biden administration policies, amongst  
23       experts in immigration, do in fact do that, but  
24       I do not have a citation to that specifically.

25       BY MR. SCHULTZ:

1 Q. Why didn't -- if it's so generally noted,  
2 why didn't you find a citation?

3 A. Because it's generally noted that -- I  
4 would reference in particular the testimony of then  
5 Border Patrol Chief Ortiz in Florida versus United  
6 States in various statements that have been made by  
7 other individuals in the border patrol thereafter.

8 Q. And we'll turn to the Ortiz point in a  
9 moment.

10 You say "perceived around the world."  
11 That's a very broad statement, isn't it, "around the  
12 world"?

13 A. It is, but it's one that I believe is  
14 correct because we've seen a huge influx in the entry  
15 of migrants from countries that we didn't  
16 traditionally see them from.

17 As recently as FY 2007, the majority of  
18 migrants apprehended by border patrol after entering  
19 illegally at the southwest border from Mexico. We  
20 saw that change in FY 2014 to where nationals of the  
21 central triangle countries, so El Salvador,  
22 Guatemala, and Honduras, actually made up a majority.

23 But we still saw very low levels of  
24 immigration from the rest of the world. Border  
25 patrol actually keeps statistics on the nationalities

1 of the individuals that it apprehends.

2 Q. Thank you.

3 A. Since the Biden administration has taken  
4 office, we've seen an expansion to individuals from  
5 countries that we did not traditionally see them from  
6 in Africa, Eastern Europe, Asia, and other countries  
7 in South America that were not typically countries  
8 that we saw people from.

9 Q. Is there any surveys you know about where  
10 people have documented what their views of the Biden  
11 administration's policies are that you could have  
12 cited but didn't?

13 A. Well, I know that Chief Ortiz alluded to  
14 them in his deposition. I read a lot of newspaper  
15 articles. This is what I do for a living.

16 Q. I specifically asked about surveys, not  
17 newspaper articles. Any surveys that you're aware of  
18 that show people's perception, since you used the  
19 word "perceived"?

20 A. I based it upon the newspaper articles that  
21 I have reviewed, statements that I have seen.

22 Q. What are those newspaper articles, please?

23 A. I've seen reference to such things in  
24 national newspapers. Also to -- generally, I read  
25 them online. Part of my job is to read newspaper

1 articles every day, read analyses every day. I can't  
2 cite you to a specific one.

3 Q. So even though you read those newspaper  
4 articles every day and even though you read analyses  
5 every day and even though you say that these surveys  
6 exist, you decided not to put that as a citation to  
7 footnote in paragraph 49, correct?

8 A. It's so generally accepted, I did not  
9 believe that it required reference.

10 Q. Does anyone disagree with that that you've  
11 ever read about in all of those newspaper articles or  
12 analyses?

13 A. The Biden administration in particular  
14 cites to conditions around the world, geopolitical  
15 conditions is the term that Judge T. Kent Wetherell,  
16 II used in Florida versus United States.

17 And when I refer to the Biden  
18 administration, I'm referring specifically to the  
19 White House, where they talk about root causes of  
20 immigration.

21 And I do see people that offer contrary  
22 views in connection with that. It is my -- it is my  
23 conclusion, based upon the survey that I've read, and  
24 it's generally accepted that the Biden administration  
25 policies are a pull factor, drawing people to the

1 United States.

2 Q. Let's put aside pull factor for a moment.  
3 We'll get to that. But just to make sure I  
4 understand what you're saying.

5 What you're saying is that it's generally  
6 accepted around the world that the Biden policies are  
7 seen as an announcement that the U.S. borders are  
8 open and the only -- with all of the reading of  
9 newspaper articles and analyses that you read every  
10 day, the only descent that you've seen from that is  
11 from the Biden administration and more specifically  
12 from the White House; is that your testimony here  
13 under oath today?

14 MR. ST. JOHN: Objection. Asked and  
15 answered.

16 THE WITNESS: Just to clarify the statement  
17 that you made, generally accepted within the  
18 United States amongst immigration experts that  
19 they create a pull factor. There are differing  
20 views, but it is generally accepted that that is  
21 a pull factor.

22 BY MR. SCHULTZ:

23 Q. So now you're modifying what you wrote  
24 where you said perceived around the world, to what  
25 you said a moment ago where you said it's only within

1 the United States. Is that what you're now  
2 testifying to?

3 MR. ST. JOHN: Objection. Misleading.

4 THE WITNESS: The generally accepted,  
5 Counsel, is within the United States that those  
6 policies are perceived around the world as a  
7 pull factor, as an announcement that the U.S.  
8 border is now open.

9 BY MR. SCHULTZ:

10 Q. You spoke to one source for that as the  
11 deposition of Mr. Ortiz; is that right?

12 A. That is correct.

13 Q. So when he testified in that deposition, do  
14 you know if he did so as an expert or in his own  
15 personal capacity?

16 MR. ST. JOHN: Objection. Misleading.

17 BY MR. SCHULTZ:

18 Q. It's a question. Do you know if he  
19 testified as an expert or in his own personal  
20 capacity?

21 MR. ST. JOHN: Objection. Misleading.

22 Counsel, that is not a binary choice. You're  
23 not even presenting the correct option.

24 MR. SCHULTZ: That's a speaking objection.  
25 Thank you.

1 BY MR. SCHULTZ:

2 Q. You can answer the question, please.

3 A. He was testifying in his capacity as the  
4 chief of the border patrol.

5 Q. Okay.

6 MR. ST. JOHN: Counsel, I will not  
7 tolerate -- the state will not tolerate  
8 misleading questions like that. That is not  
9 square ball.

10 MR. SCHULTZ: Counsel, there is no question  
11 before the witness right now. You've made your  
12 objection.

13 MR. ST. JOHN: I've made my objection and  
14 I'm informing opposing counsel that trying to  
15 mislead the witness is not square ball. And if  
16 it continues, that is absolutely something we'll  
17 get the court on the phone for.

18 Do not -- please do not ask a question A or  
19 B, when you know that C is the correct answer.  
20 And please don't pretend that the people in that  
21 room right there did not know the capacity Chief  
22 Ortiz was testifying in.

23 MR. SCHULTZ: Are you giving -- anything  
24 else to say here, Scott?

25 MR. ST. JOHN: I've made my record.

1 MR. SCHULTZ: Would you like to keep  
2 speaking?

3 MR. ST. JOHN: I will make objections as I  
4 need to, and if this continues, we will  
5 absolutely get the court on the phone.

6 MR. SCHULTZ: I'm just asking if you're  
7 done?

8 MR. ST. JOHN: I've made my objection,  
9 Counsel.

10 MR. SCHULTZ: Very good.

11 BY MR. SCHULTZ:

12 Q. So turning back to paragraph 49, do you  
13 conduct any of your own research, any of your own  
14 primary research, Judge Arthur, on the perception of  
15 the Biden administration policies around the world?

16 A. I do, in fact, go to the border and I do  
17 speak to individuals at the border.

18 Q. What languages do you speak, sir?

19 A. I speak English.

20 Q. Okay. Do you speak to the people coming  
21 across the border in English?

22 A. I have spoken to individuals in the  
23 communities in which those individuals are being  
24 released.

25 Q. What communities are those?



1           A.     I've been all around the border. I've been  
2           to Yuma, Arizona; El Paso, Texas; the Rio Grande  
3           Valley, and that's just, I believe, this year.

4           Q.     Okay. But you didn't cite to any of that  
5           research in your expert report, did you?

6           A.     That is correct. I will note that my  
7           colleague, Todd Bensman, does actually go to the  
8           other side of the border and he does take a  
9           translator with him who is fluent in Spanish and able  
10          to speak Spanish, and he regularly writes on those  
11          subjects as well.

12          Q.     Can you spell his name, please?

13          A.     B-e-n-s-m-a-n, all one word. And Todd,  
14          T-o-d-d.

15          Q.     Do you cite to his research anywhere in  
16          this expert report?

17          A.     I may. I'd have to look at the whole  
18          thing.

19          Q.     Did you cite to it in reference to  
20          paragraph 49?

21          A.     I did not, Counsel.

22          Q.     So you could have, but you didn't, right?

23          A.     Again, it's generally accepted that that is  
24          the perception around the world.

25          Q.     Okay. So you talk about Biden policies.

1 Am I saying that right, policies, plural?

2 A. That is correct, Counsel.

3 Q. So that means more than one policy, right?

4 A. That is correct, Counsel.

5 Q. Please tell me the names or at least the  
6 substance of the policies that you have in mind now.  
7 Please list them for me.

8 A. Sure. The ending of the Migrant Protection  
9 Protocols, MPP, which is commonly known as Remain in  
10 Mexico, ending the policy of detaining individuals  
11 who enter in what are called family units or FMUs,  
12 the CBP One application program, which was announced  
13 in a White House press release on January 5th.

14 There are other policies that are contained  
15 therein, but the general policy of not detaining  
16 aliens and following a very different -- parole plus  
17 ATD.

18 Q. I'm sorry, you used and acronym there.  
19 Parole plus?

20 A. That's what it's called, parole plus ATD.

21 Q. Adam Thomas --

22 A. Alpha Tango David.

23 Q. Thank you.

24 A. And I'm trying to think of some more.

25 Changing the release policies that had been

1 followed by previous administrations, including the  
2 Trump and Obama administrations.

3 Q. Are there any other Biden administration  
4 policies that have been implemented that made you  
5 think that people around the world have a perception  
6 that the Biden administration has opened the borders?

7 A. They all very much tie together with  
8 respect to the opportunity for release and the  
9 opportunity to work in the United States.

10 Q. And I appreciate that.

11 A. There was an EO that was issued February  
12 2nd, I think it was, 2021. I don't have the number,  
13 but it talked about how it was going to change the  
14 policies of the prior administration.

15 Q. So you said EO, that means executive order;  
16 is that right?

17 A. That's correct, sir.

18 Q. And you said February 22nd, it was issued?

19 A. February 2, 2021.

20 Q. February 2, 2021. Changed the policies of  
21 former administration; that's what you said?

22 A. The former administration. And I would  
23 reference also President Biden's election website. I  
24 can't remember what it was called. They've actually  
25 pulled it down. It's got a picture of President

1 Biden with glowing red eyes now, but it was -- I  
2 believe it was the Biden plan for -- I can't  
3 remember.

4 Q. That was an election website, correct?

5 A. It was an election website, but we saw a  
6 huge uptick directly after President Biden took  
7 office, you know, in connection with statements he  
8 made, including statements he made on that website.

9 Q. Is there anything else that you can think  
10 of that speaks to what you wrote in paragraph 49  
11 about resulting -- about Biden administration  
12 policies that are perceived around the world as an  
13 announcement that the U.S. borders are now opened?

14 A. Yeah. Guidelines that were issued by  
15 Secretary Alejandro Mayorkas on September 30th, 2021.  
16 Sometimes it's referred to as the priorities memo. I  
17 don't want to paraphrase what he said, but he stated  
18 that unlawful presence in the United States was not  
19 sufficient to take an enforcement action, in and of  
20 itself. Again, I don't want to paraphrase.

21 Q. That was the guidelines from Secretary of  
22 Homeland Security, Mayorkas, from September 31st; is  
23 that what you said?

24 A. September 30th. I don't think there is a  
25 31st.

1 Q. I apologize.

2 A. That's quite all right. I make that  
3 mistake all the time. I have to rewrite checks.

4 I can't remember the exact name of it, but  
5 it's known as the guidelines of the priority memo.  
6 It's the document that was at issue in Texas versus  
7 United States.

8 Q. Okay. Is there anything else that you can  
9 think of that are Biden administration policies that  
10 have led to the perception around the world as an  
11 announcement that the U.S. borders are now open?

12 A. Those are the ones that come to mind. I'll  
13 tell you if I come up with something else.

14 Q. And if during the rest of this deposition,  
15 if anything else comes to mind, please do let me  
16 know.

17 A. Sure.

18 Q. Okay. Thank you.

19 Now, you had mentioned pull factors a  
20 moment ago, correct?

21 A. That's correct, Counsel.

22 Q. And just give me a moment. I'm going to  
23 bring it up in a little bit, but let me see if it  
24 makes sense to do it now. If you don't mind indulge  
25 me for a moment, please.

1                   How about this: In paragraph 43, this is  
2                   kind of related to what we were just saying, I'm  
3                   going to read you something you wrote there. This is  
4                   paragraph 43, page ten. It looks like it's two  
5                   sentences.

6                   It says, "President Biden took office on  
7                   January 20, 2021. That same day he issued multiple  
8                   executive orders related to immigration and border  
9                   policy, with yet more following in the subsequent  
10                  months."

11                  Did I read that correctly in paragraph 43?

12                  A. That is correct.

13                  Q. Can you tell me, please, either by name or  
14                  by substance, what those executive orders were?

15                  A. I would --

16                  MR. ST. JOHN: Objection. Best evidence  
17                  rule.

18                  MR. SCHULTZ: My question is what does he  
19                  think of as those -- that's my question, what's  
20                  in his head. I'm going to ask that question  
21                  again.

22                  Are you done with your objection, Scott?

23                  MR. ST. JOHN: Objection. Best evidence  
24                  rule.

25                  You can answer, Judge Arthur.

1 THE WITNESS: Yeah, I would need to look at  
2 the document again to refresh my recollection  
3 with respect to what they were. There was also  
4 a memo that was issued by the acting head of  
5 DHS, whose name escapes me at the moment, that  
6 actually placed a moratorium on removals from  
7 the United States.

8 That was issued almost immediately after  
9 President Biden was sworn in. It's -- let me  
10 just see. Yes, I'd have to take a look at the  
11 document to remember what all they were. He's  
12 issued a lot of executive orders.

13 BY MR. SCHULTZ:

14 Q. Any other way of trying to specify what  
15 those might be that you can recall from your own  
16 memory right now?

17 A. I cannot, Counsel.

18 Q. Okay. But did you have some of those in  
19 mind when you wrote that report, when you wrote  
20 paragraph 43 of your report?

21 A. I did, Counsel.

22 Q. Okay. So let's maybe work on the -- let's  
23 approach the pull factors this way: Let's turn to  
24 page 12 here. And there's a subheading there I'm  
25 going to read that's between paragraphs 49 and 50.

1 It says, "Migrant flows are responsive to policy."

2 Do you see those words that you wrote?

3 A. I do, Counsel.

4 Q. And did I read those correctly?

5 A. You did, Counsel.

6 Q. Okay. So let's look to the next paragraph,  
7 paragraph 50. There's a couple of sentences I'm  
8 going to read there.

9 Actually, let's stick with that subheading.  
10 You used the phrase migrant flow. What is migrant  
11 flow?

12 A. Migrant flow is a generally accepted term  
13 that refers to an increase, decrease, or steady flow  
14 of migrants into the United States illegally or  
15 without proper documents at the borders.

16 Q. Okay. And you didn't make up that phrase  
17 then, did you?

18 A. No. That's a common phrase, commonly used  
19 phrase.

20 Q. Okay. And then you say, are responsive to  
21 policy.

22 In that context, can you tell me what you  
23 meant by responsive?

24 A. Sure.

25 Q. And I'll just note for the record, you seem



1 to be frozen, both of you. Now you're unfrozen. The  
2 visual doesn't matter, just that it might be a  
3 foreshadowing that there might be an audio problem.  
4 I didn't actually hear an audio problem, though.

5 A. It was actually you that was frozen in that  
6 particular instance.

7 Q. I think it was each of us, depending where  
8 we sat.

9 A. It is -- again, I've been in this field for  
10 30 years. And over that 30-year period, I have seen  
11 the implementation of policies that have either  
12 increased the flow of migrants illegally into the  
13 United States or decreased them.

14 The most significant one that I can think  
15 of was the election of Donald Trump in January of  
16 2017. We saw a decline when President Trump took  
17 office. That decline didn't last long. It lasted  
18 about four months and we started to see the numbers  
19 of individuals entering the United States illegally  
20 tick up after that.

21 I've written a lot about this, and I think  
22 I've even used the term Trump effect. I borrowed the  
23 term Biden effect with respect to a flow that we saw  
24 shortly after President Biden took office, when we  
25 saw the number of aliens who entered the United

1 States illegally increase directly thereafter.

2 Another policy that affected the migrant  
3 flow was what I referred to before, the migrant  
4 protection protocols or MPP. MPP was implemented in  
5 a phase stage, and when it was fully implemented it  
6 caused a decline in the migrant flow across the  
7 border. DHS actually did an assessment of that in  
8 October 2019.

9 Q. Okay. So when folks talk about migrant  
10 flows, that seems to get into areas of demography.  
11 Are you a demographer?

12 A. I'm sorry, how does it get into issues of  
13 demography?

14 Q. It seems to me it's about where people are  
15 and where they're going. It's about people being not  
16 in one place but instead in another place.

17 My only question is, do you have a degree  
18 in demography?

19 A. No, Counsel. We've gone over my academic  
20 pedigree. I do not, but I for decades have dealt  
21 with the flow of individuals into the United States  
22 and the way that they come to the United States.

23 Q. Okay. And let me read the first sentence  
24 of paragraph 50. It's right below that subheading.  
25 It says, "Migrant flows are responsive to policy in

1 generally predictable ways." Next sentence says,  
2 "That follows from the basic economic premise that  
3 demand increases when the cost or burden of  
4 something -- here, the likelihood of detention or  
5 removal -- is reduced, or the likely gain -- here,  
6 release into the interior of the United States, with  
7 employment authorization following in short order --  
8 is increased."

9 Did I read that correctly?

10 A. You did, Counsel.

11 Q. Okay. So when you say "predictable ways,"  
12 what do you mean by that?

13 A. Depending on whether the policy makes it  
14 more or less likely that the individual will be  
15 detained vis-a-vis being released into the United  
16 States. Most of the individuals who come to the  
17 United States pay a smuggler to bring them at least  
18 part of the way into this country. And they have to  
19 make an economic investment in that smuggler when  
20 that happens, and they want to see a return on their  
21 investment.

22 Part of the reason why Remain in Mexico was  
23 effective was because --

24 Q. I'm not asking about Remain in Mexico right  
25 now.

1           A.     I'm sorry, I was just giving you an example  
2     of this. I wanted to be clear for the record.

3           But yeah, when the likelihood that an  
4     individual is going to be released into the United  
5     States and be able to live and work here or  
6     potentially gain status here or remain here  
7     indefinitely, the flow increases.

8           Q.     Okay. So that first sentence when you talk  
9     about generally predictable ways, there is no  
10    footnote, is there?

11          A.     There is not, Counsel. Again, it's  
12    generally accepted that that's how the border works.

13          Q.     When you say it's generally accepted, do  
14    you mean there is authority that you could have  
15    cited, you just decided not to?

16          A.     No, it's one of those things that's so  
17    commonly accepted, it doesn't really require a  
18    footnote or citation.

19          Q.     Okay. So you told me before that you --  
20    when you were at the University of Virginia and  
21    studied in Charlottesville, you had a concentration  
22    in economics and except for statistics, you were one  
23    class short for qualifying for a degree in economics,  
24    right?

25          A.     That is correct.

1 Q. Do you remember when you were at the  
2 University of Virginia, did you ever study the  
3 economics of migration?

4 A. I did not.

5 Q. Okay. Do you have any academic training in  
6 the economics of migration?

7 A. I have 30 years of experience in it. But  
8 with respect to academic degrees, I do not.

9 Q. Okay. And not just academic degrees, do  
10 you have any academic training at all -- academic  
11 training at all in the economics of migrations  
12 movement?

13 A. The economic experience that I have is  
14 through the classes that I attended at the university  
15 of Virginia and it did not involve migration.

16 Q. Thank you. Do you know if there are  
17 people, academics who study the economics of  
18 migration movement?

19 A. There are individuals who do have that  
20 field of study, yes.

21 Q. Okay. But you're not one of them?

22 A. I am a person who has gained my experience  
23 in this through practical experience, not through  
24 academic experience.

25 Q. Okay. And this is a bit of a paraphrase,

1 but tell me if this is a fair paraphrase. I'm  
2 looking at paragraph 50. Let me see if I can think  
3 of a better way to ask this. One moment, please.  
4 Thanks.

5 One of the -- tell me if this is fair or  
6 not, and if it's not, then please try to fix it.

7 Is it fair to say in paragraph 50 that  
8 you're saying that the likelihood of detention or  
9 removal being decreased is something in your opinion  
10 that migrant flow responds to?

11 MR. ST. JOHN: Objection. The report  
12 speaks for itself.

13 You can answer.

14 THE WITNESS: Yes, I would.

15 BY MR. SCHULTZ:

16 Q. Okay. Thank you.

17 A. And I could give you examples if you'd  
18 like, Counsel.

19 Q. I might ask you for that, but not quite  
20 now. But thank you for that offer.

21 A. We certainly saw it after Judge Gee issued  
22 her order in 2015 --

23 Q. No question pending, but thank you.

24 A. I apologize.

25 Q. So how does that mechanism work? How, in

1 your experience, does a likelihood of detention  
2 somehow affect migrant flow? Can you walk me  
3 through, please, the steps on how that reaches the  
4 people whose -- who are part of that migrant flow?

5 A. Oh, yeah. It happens in a couple of ways.  
6 Part of it is through word of mouth by individuals  
7 who have gotten to the United States who have been  
8 released into this country where they can live or  
9 work.

10 Part of it is the sales pitch that the  
11 smugglers themselves offer. And in fact, I think  
12 President Biden alluded to this during statements he  
13 made in Guatemala City in June of 2014, with respect  
14 to -- when he was vice president, of course -- with  
15 respect to smugglers explaining to people how they  
16 are able to come to the United States and the  
17 likelihood that they're going to be released into  
18 this country. Foreign media sometimes carries  
19 information about these things.

20 Q. Okay. And does the IFR, in your opinion,  
21 lead to a --

22 A. In fact, Counsel, I do need to -- at one  
23 point, I believe that Secretary Mayorkas may have  
24 chided individuals, elected representatives who were  
25 talking about the border being open, because it would

1 encourage additional individuals to enter the United  
2 States, when he asserted that the border was not  
3 open.

4 Q. Okay. In your view, is the IFR something  
5 that decreases the likelihood of detention or  
6 removal?

7 A. It does, by its face, because it lowers the  
8 standard for parole for individuals who are pending a  
9 credible fear determination.

10 We certainly saw in December of 2009 then  
11 ICE director, John Warden, issued a directive to  
12 allow individuals who had passed credible fear to be  
13 paroled into the United States.

14 And we saw -- up to that point in the years  
15 before that, four years before that, we had seen  
16 somewhere around 4 to 5 percent of individuals who  
17 were subject to credible -- subject to expedited  
18 removal make credible fear claims.

19 After Secretary --

20 Q. Just to be clear, you're talking about  
21 Secretary Morton in 2009, correct?

22 MR. ST. JOHN: Objection. Counsel, the  
23 witness is answering. He gets to --

24 MR. SCHULTZ: The question was about the  
25 IFR, which was long after 2009.



1 THE WITNESS: Right, Counsel, but I'm  
2 explaining to you how the availability of parol  
3 with respect to --

4 BY MR. SCHULTZ:

5 Q. That wasn't my question. My question was  
6 not about the availability of parol. My question was  
7 specifically about the IFR.

8 A. Again, we can look back at past experience  
9 to see that the opportunity for parole for  
10 individuals, the expansion of parol for individuals  
11 does increase the number of individuals who will come  
12 to the border and make credible fear claims.

13 Q. Okay.

14 A. And I apologize, Counselor. I don't mean  
15 to offend you.

16 Q. There is no offense. There's just a lot of  
17 ground to cover today, and as I'm sure you know,  
18 there's a limited amount of time. I do have some  
19 questions about parole, which we might get to later  
20 on. That question was just about the IFR. So thank  
21 you so much.

22 A. Thank you. Plus the availability of  
23 asylum, because this is the IFR. If individuals are  
24 granted the asylum more quickly through this process,  
25 whether they should be granted or not, whether it's

1 easy to get asylum before an asylum officer than it  
2 is before an immigration judge, it will in fact  
3 encourage other individuals to come to the United  
4 States to take advantage of that process.

5 Q. Now let's get into the phrase you used a  
6 moment ago. You talked about a pull factor. Did you  
7 use that phrase a few minutes ago?

8 A. I did, Counselor.

9 Q. You're also familiar with something else  
10 that's called a push factor that's related to a pull  
11 factor?

12 A. Yes, Counselor.

13 Q. Can you tell me as quickly as possible just  
14 what those terms, pull factor and push factor, mean?  
15 It's a bit of a tongue twister. I apologize.

16 A. Sure. Pull factors are factors that  
17 encourage people to come to the United States because  
18 of things that are happening in the United States.

19 Push factors are factors that are unique to  
20 the countries in which those individuals come that  
21 encourage them to come to this country or to leave  
22 home or to go anywhere else. Push factors and pull  
23 factors are generally accepted to be fairly common  
24 within migration, generally.

25 Q. And do both pull and push factors lead

1 people to migrate?

2 A. Both push factors and pull factors do lead  
3 people to migrate.

4 Q. Okay. And do pull and push factors lead  
5 people to migrate to the United States of America?

6 A. Yes, in differing degrees depending on the  
7 strength of the pull factor and the strength of the  
8 push factor.

9 Q. Okay. So can you tell me, please, if there  
10 are any push factors that you can think about,  
11 please -- that you can name, please.

12 A. Certainly. Generally accepted push factors  
13 are economic conditions in the home country,  
14 political conditions in the home country, war in the  
15 home country, crime, disorder, violence. Did I  
16 mention corruption before? Corruption is one that is  
17 identified.

18 Q. Thank you. You had not. That was not a  
19 repeat. Corruption was not mentioned before. Thank  
20 you.

21 A. Those are ones that the Biden  
22 administration has specifically cited.

23 Q. What about you, from your experience? Any  
24 other push factors aside from what the Biden  
25 administration has or hasn't said?

1           A.     Again, I've been involved in this for three  
2     decades, plus. With respect to push factors, I can  
3     remember times in history, including civil wars in  
4     Guatemala and El Salvador, in which we didn't see the  
5     same level of individuals coming to this country from  
6     those countries as we have of late.

7           I can, you know, think of other conditions  
8     of violence in other countries, certainly the rise of  
9     Hugo Ch vez in Venezuela. He's not currently the  
10    president. He's the former president. That we did  
11    not see large numbers of Venezuelans come to the  
12    United States. We would generally see those relocate  
13    within other countries.

14          Q.     I don't think you said this before, but now  
15    that you mentioned Venezuela, can famine be a push  
16    factor?

17          A.     I believe the term that is used is food  
18    insecurity. And with respect to that as a push  
19    factor, it can either lead to internal relocation or  
20    relocation to a nearby country.

21          Q.     So it can lead to some sort of migrant flow  
22    though; is that right?

23          A.     It can lead to a migrant flow.

24          Q.     Okay. What about COVID? Obviously that's  
25    very recent in human history, but can COVID be a push

1 factor?

2 A. Actually, COVID is sort of a negative push  
3 factor because most borders shut down their -- most  
4 countries shut down their borders in response to  
5 COVID or put restrictions on individuals to transit  
6 to the United States or, you know, even to transit to  
7 nearby countries. So with respect to that, it's sort  
8 of a mixed bag.

9 Q. But border closures aren't always a factor  
10 that governments might hope they'd be, right?

11 A. Depends on the government, depends on the  
12 border.

13 Q. I don't think you mentioned educational  
14 opportunities. Is that something else that can be a  
15 push factors?

16 A. Yes. Educational opportunities in the  
17 United States can be a pull factor with respect to  
18 the educational opportunities in the country in  
19 question. That's sort of a comparison factor.

20 Q. Something like education might be both a  
21 push and a pull factor; a bad education in their home  
22 country might be pushing them and a good education  
23 here might be pulling them. Is that a fair --

24 A. Yes, but in most countries, the -- again,  
25 from my experience, the level of education is static.

1 It's not quite -- it's not quite the factor that food  
2 insecurity would be, because again, that's --  
3 education is more of a pull factor than a push  
4 factor.

5 Q. Okay. I mean, I'm not sure much rides on  
6 it. I suppose all I'm thinking is if education were  
7 equal in two countries, it wouldn't be a factor.

8 So if it's worse in one country and better  
9 in another, it seems that the bad education is doing  
10 the pushing and the good education is doing the  
11 pulling, right?

12 A. I would define that as a pull factor,  
13 again, because there are educational systems in most  
14 countries of differing degrees. So, you know, the  
15 opportunity for better education in the United States  
16 would be more of a pull factor.

17 Q. Okay. Thanks for clarifying and talking  
18 that through.

19 So you said before that both push factors  
20 and pull factors can lead to migrant flows, right?

21 A. That is correct, sir.

22 Q. Okay. So what are some of the pull factors  
23 then? You mentioned education. What are some of the  
24 other pull factors?

25 A. Education, economic opportunities, general

1 security. Economics is really the biggest one.

2 Comparing the daily rate for unskilled workers.

3 And I did this at one point a couple of  
4 years ago. It's about a ten-to-one differential  
5 between Central America and the United States and  
6 about an eight-to-one differential between Mexico and  
7 the United States. So, you know, economic  
8 opportunities is really the biggest one.

9 Reunification with family is a pull factor.  
10 Better education, if I didn't say that already, is a  
11 pull factor.

12 Q. We did talk about the education. Thank  
13 you.

14 Okay. So in your report, in your expert  
15 report, do you talk about any methodology that you or  
16 others might have used to kind of differentiate  
17 between the force of different pull and push factors?

18 A. So I look at -- in the past, I've looked  
19 at -- in my report, no, but from my experimental --  
20 again, these are generally accepted things.

21 I examine the country's conditions in  
22 various countries around the world and compare them  
23 to previous periods of time when we had large -- when  
24 we -- compare them to the migrant flow from those  
25 countries in the past.

1 Q. You said you have 30 years of experience  
2 looking at migrant flows; is that right?

3 A. I have 30 years of experience in  
4 immigration law. I certainly had the opportunity to  
5 examine migrant flows beginning in September of 1994  
6 when I became a trial attorney in San Francisco.

7 San Francisco had an international airport  
8 and we had a lot of people who would come through the  
9 international airport and a lot of people who would  
10 make their way to San Francisco.

11 Certainly when I was in Baltimore, I saw  
12 very different flows. We had an international  
13 airport there as well. When I was in the general  
14 counsel's office at the INS, again, these were issues  
15 that I had to deal with on a regular basis.

16 I was on both the enforcement and the  
17 national security teams serially. And certainly when  
18 I was on the hill as oversight counsel for  
19 immigration for house judiciary and as staff director  
20 of the national security subcommittee and house  
21 oversight and government reform, I certainly saw it  
22 come through my corporate.

23 Q. In all of that experience, have you come  
24 across any methodologies for giving different weights  
25 to different pull and push factors?



1 A. With respect to academic?

2 Q. Let's start with academic. Sure.

3 A. I assume there may be some. I've never had  
4 the opportunity to see them.

5 Q. Okay. Did you talk about them in your  
6 expert report?

7 A. I did not, because they may exist; I'm not  
8 familiar with them.

9 Q. So you said, "Do you mean academic?" I  
10 said, "Let's start with that."

11 Aside from academic models, are there any  
12 other practical models that you've seen that have a  
13 methodology for distinguishing the force of different  
14 pull and push factors, even if not from academic,  
15 something that is a recognized methodology, though?  
16 Anything come to mind?

17 A. Mine is experiential.

18 Q. But and is that something that you've  
19 reduced in any way to a formula or a flow chart or  
20 anything that again shows a method, a methodology?

21 A. No, Counsel.

22 Q. And that's not in your report, in your  
23 expert report here either, is it?

24 A. That is correct. I don't cite any  
25 flowcharts or methodologies that I created.

1 MR. SCHULTZ: Okay. Thank you. Give me  
2 one moment here, please. Okay? Thank you.

3 We're going to take a bathroom break for  
4 five minutes or so. We'll come back to this  
5 topic when we're done.

6 What I have here is 12:21, so let's take  
7 five and see where we are.

8 (RECESS TAKEN.)

9 BY MR. SCHULTZ:

10 Q. It's 12:30. We're back on the record now.

11 So let's turn over actually a little bit  
12 back to something on paragraph 43, where you wrote in  
13 the second sentence that -- I'm sorry, I have the  
14 wrong paragraph here. One moment.

15 A. I believe we were on 49 last time.

16 Q. That's right. I am moving to something  
17 different here, but let me -- my notes are off. Give  
18 me a second to try to find this. Apologies.

19 Paragraph 46. There we go. If you can go  
20 there, please. You're talking there about testimony  
21 by Rodney Scott, correct?

22 A. That's correct, Counsel.

23 Q. Okay. And he was also an expert in this  
24 case. Are you aware of that?

25 A. Was he an expert in this case?

1 Q. Do you know if he's an expert in this case?

2 A. I don't know Chief Scott's status in the  
3 case.

4 Q. Okay.

5 A. I believe he may be an expert, but I'm not  
6 100 percent sure.

7 Q. Okay. And one of the quotes you have in  
8 there talks about a quote -- about, quote, the  
9 administration's laser focus on expediting processing  
10 and increasing opportunities for migrants to enter  
11 the United States. That's a partial quote. Is that  
12 right?

13 A. Yes, it ends with "never waived."

14 Q. Yeah. Okay. Do you know what policies  
15 Mr. Scott was talking about there?

16 A. He doesn't use the words "policies" in that  
17 sentence.

18 Q. Right.

19 A. I believe that he was -- with respect to  
20 what he was saying, I believe that he was referring  
21 to the Biden administration's release policies,  
22 protocol into the United States.

23 Q. Can you say that once more? I didn't quite  
24 catch one of those words.

25 A. The process by which border patrol agents

1 would speed the processing of individuals and their  
2 release into the United States. And again, that was  
3 reflected in Florida versus United States.

4 Q. Okay. And in paragraph 47, also Mr. Scott,  
5 he wrote at one point that the Biden, quote,  
6 administration has made it very clear deterrence was  
7 no longer our mission.

8 Do you remember putting that in paragraph  
9 47?

10 A. Yes, Counsel.

11 Q. Do you see that there?

12 A. I do, Counsel.

13 Q. And do you agree with that?

14 A. With respect to the degree that Chief Scott  
15 made that statement, I agree with it. I don't work  
16 at border patrol, but that's reflected in the actions  
17 of the administration.

18 Q. And it --

19 A. Certainly in Judge Wetherell's decision.

20 Q. When you say the acts of the  
21 administration, what do you mean?

22 A. I'm sorry?

23 Q. You said "reflected in the actions of the  
24 administration," and I asked you to please say what  
25 you meant.

1           A.     Sure. With respect to processing migrants  
2 out of custody and releasing them into the United  
3 States.

4                     In fact, that was actually a key point in,  
5 I believe, Florida versus Mayorkas. Again, Judge  
6 Wetherell's decision in that matter.

7           Q.     And besides Mr. Scott's testimony, do you  
8 have any support for what he said?

9           A.     Chief Scott actually sent a letter to  
10 Senate leadership on September 11, 2021, in which he  
11 talked about the dangers with respect to that. And  
12 again, it's reflected in the decisions of Judge  
13 Wetherell in both Florida versus United States and  
14 Florida versus Mayorkas.

15          Q.     Okay. So given Mr. Scott's testimony that  
16 deterrence was no longer a DHS mission, is that a  
17 pull or a push factor?

18          A.     With respect to deterrence not being a  
19 factor, that is a pull factor because it makes it  
20 more likely that individuals will successfully enter  
21 the United States.

22          Q.     Let's go over to paragraph 48 then. Tell  
23 me once you're there, please.

24          A.     I'm here.

25          Q.     So to paraphrase, you said that there were

1 policies -- that there was times -- that there were  
2 policies implemented and you wrote that the Biden  
3 administration did not consult with the border patrol  
4 chief, and you wrote in paragraph 48 that that -- the  
5 failure to consult was quote, unquote, shocking; is  
6 that right?

7 A. Yes, that is correct.

8 Q. And do you know what time period we're  
9 talking about there?

10 Let me ask it this way: Is that the time  
11 period that's right after the Biden administration  
12 took office?

13 A. Again, that is -- Chief Scott sent his  
14 letter to the Senate September 11, 2021, looking back  
15 during the time that he was border patrol chief. He  
16 was actually President Biden's first border patrol  
17 chief.

18 Q. Right. Do you know when that failure to  
19 consult took place?

20 A. Yeah. He actually discusses it in that  
21 letter when he talks about that recommendations  
22 from -- I don't have the letter in front of me. I  
23 don't want to paraphrase, but recommendation from  
24 career employees were ignored and, you know,  
25 political appointees ignored them.

1 Q. Okay. So thank you for that. I am going  
2 to ask you to please focus on the question that I  
3 asked, which is about the time period.

4 Do you know what time period he was saying  
5 when that failure to consult took place, please?

6 A. Yeah, he reflects back. Again, the reason  
7 that I -- I apologize, he talks about the time that  
8 he was border patrol chief in that September 2021  
9 letter.

10 And you know, the same policies appear to  
11 have taken place with respect to internal  
12 communications. I relied on Chief Scott's testimony.

13 Q. Okay. So again, do you know when that  
14 failure to consult took place?

15 A. With respect to -- he indicated at the time  
16 that that was endemic in the Biden administration  
17 while he was chief.

18 Q. Okay. So when the Trump administration  
19 took over -- so this is back, I guess, January 2017,  
20 do you know who the chief of border patrol was back  
21 then, starting on inauguration day, let's say?

22 A. I believe it was Mark Morgan.

23 Q. And do you know if there was any  
24 consultation about policies between the Trump  
25 administration and that chief who's name you just

1 mentioned?

2 A. I didn't serve in the Trump administration.

3 Q. So are you saying that you don't know?

4 A. I have reason to believe that there was a  
5 lot of back-and-forth. I had a lot of access to  
6 border patrol agents during that period of time. And  
7 I believe that the border patrol chief's advises were  
8 taken seriously by the administration.

9 Q. So you believe that. Do you have any  
10 source for that? Any evidence?

11 A. Again, I spoke to border patrol agents.  
12 When I would go to the border to talk about the  
13 policies, I would talk to -- I can't remember. I  
14 talked to line agents. I spoke to chiefs. I can't  
15 give you specific chiefs in places.

16 Q. Okay. Why do you say that it's shocking?

17 A. It's shocking because, again, I served at  
18 INS under the Clinton administration, under Attorney  
19 General Janet Reno, and input from border patrol was  
20 one of those things that not only we at the INS, but  
21 all the way up the chain to the attorney general  
22 would solicit and listen to.

23 Q. Okay. Is the chief of border patrol a  
24 political-appointed appointment?

25 A. The chief of border patrol is a term



1 appointment or is -- I can't remember whether it's  
2 Schedule C or not.

3 Q. Okay. Let's go over to paragraph 58.  
4 That's 5-8. And that's going to be on page 15.

5 Are you there?

6 A. I am, Counsel.

7 Q. Okay.

8 A. You hadn't asked a question, so I wasn't  
9 sure what you wanted me to say.

10 Q. I wanted to make sure you are there and had  
11 everything there in front of you, that you're  
12 comfortable before I start the question.

13 I'm going to read that sentence there.  
14 It's a one-sentence paragraph. "Consistent with and  
15 in my opinion based on the perception that U.S.  
16 borders are effectively open, migration has surged."

17 Did I read that accurately?

18 A. Correct. That's what it says.

19 Q. Okay. So when did that surge start, if you  
20 know?

21 A. The surge started -- so there was a  
22 surge -- there was a deep valley that started with  
23 Title 42 in March of 2020, and I believe it reached  
24 its nadir in April of 2021 and we started to see  
25 numbers going up.

1                   Now, this was during the Trump  
2                   administration. But the surge that I'm referring to  
3                   right there was a surge that began in -- primarily in  
4                   February of 2021 under the Biden administration.

5                   Q. And how -- what criteria are you using to  
6                   distinguish between that first surge that you said  
7                   where the nadir was April 2021 and what you're saying  
8                   was somehow separate surge in February of 2021?

9                   A. Based on the monthly apprehension numbers  
10                  that border patrol publishes.

11                  Q. Okay.

12                  A. We started to reach monthly levels that we  
13                  hadn't seen since 2000 -- since before September  
14                  11th.

15                  Q. Okay. And I might have just written the  
16                  date wrong in my notes. I apologize. Can you tell  
17                  me the date again on what you're calling the second  
18                  surge or separate surge that started later?

19                  A. I believe it began in February and then it  
20                  ticked up throughout the year with some peaks and  
21                  valleys in 20 -- I'm sorry, 2021, and then increased  
22                  with some peaks and valleys thereafter.

23                  Q. Okay. So the dates seem to have a bit of  
24                  tension. Maybe I'm misunderstanding. You said there  
25                  was a surge in March of 2020, then you --

1           A.     I apologize, Counsel. What I said was  
2           there was a nadir in March of 2020, that it actually  
3           reached the nadir in April of 2021 -- 2020. April  
4           2020.

5           Q.     Thank you. That was my -- that's where we  
6           had a disconnect. I think you said April 2021 when  
7           you meant to say April 2020.

8           A.     Thank you.

9           Q.     Just to be fair, the nadir was April 2020;  
10          is that right?

11          A.     I believe that might have been one of the  
12          lowest months for apprehensions ever.

13          Q.     I understand. It seemed you had two  
14          different dates in 2021.

15          A.     I apologize.

16          Q.     No. No. No. Thank you for clarifying. I  
17          just wanted to make sure that my notes were correct.

18                 Okay. So you mentioned peaks and valleys.  
19          So when you're talking about a separate or distinct  
20          surge, is that based on those peaks and valleys?

21          A.     Well, I'm talking about a surge that  
22          commenced beginning in February of 2021, ended -- has  
23          remained fairly steady, again, with peaks and  
24          valleys. Up until December of 2022, there was a  
25          slight decline, another decline in May of 2023

1 following the Circumvention of Lawful Pathways Rule.  
2 Then we seen them tick up again with small monthly  
3 fluctuation thereafter.

4 Q. Tell me if this is fair to say: There was  
5 a nadir in April 2020, and since then, numbers have  
6 gone up; is that right?

7 A. Right. So after the April 2020, the  
8 numbers still remained low, but they were higher than  
9 that April of 2020 number.

10 Q. Okay. Thank you. Let's go over to  
11 paragraph 64.

12 You have a sentence there -- tell me once  
13 you're there, please.

14 A. I'm there, Counsel.

15 Q. Thank you. It says, "The consensus among  
16 experts is that publicly released statistics downplay  
17 the level of migration and releases into the  
18 interior, with aliens improperly excluded from  
19 categories and other categories simply not reported.  
20 As Chief Scott testified, it is a shell game."

21 Is that accurate, what I just read?

22 A. It is correct, Counsel.

23 Q. Okay. Do you agree with what Chief Scott  
24 said there?

25 A. I do agree with what Chief Scott said

1       there.

2               Q.     What do you mean then when you're agreeing  
3       with him that there's a shell game?

4               A.     I agree that it's a shell game because  
5       things like the January 5th, 2023, announcement that  
6       migrants would be able to access the CBP One app to  
7       make appointments at the ports of entry to be  
8       released into the United States, really just had an  
9       intention of hiding the flow of migrants across the  
10      southwest border.

11              Those individuals are subject to the same  
12      inspection protocol in section 235 of the INA.  
13      They're equally inadmissible under section 235 of the  
14      INA, and they're subject to the same detention  
15      standards; however, they've been portrayed as  
16      individuals seeking to enter the United States  
17      lawfully.

18              An individual seeks to enter the United  
19      States lawfully when they come to a port of entry  
20      with proper documents to enter the United States.  
21      Those individuals don't have proper documents.

22              Q.     Are you saying that the IFR calls for a  
23      shell game?

24              A.     With respect to this, with respect to the  
25      Biden administration's policies generally. I would

1 say the same thing about the CHMV parole program that  
2 was implemented that brings 30,000 nationals of  
3 Cuban, Haiti, Venezuelan, Nicaraguans to the United  
4 States.

5 Q. You started off that paragraph again by  
6 saying that the consensus among experts, then you go  
7 on with the language I already read.

8 Do you see those words?

9 A. I do, Counsel.

10 Q. You don't have a footnote to any of those  
11 experts in that paragraph, do you?

12 A. No, I do not. I could certainly give  
13 examples with respect to that.

14 So CBP publishes what's called Custody of  
15 Transfer Statistics. One of the data points on that  
16 custody and transfer statistics is office of field  
17 operations issued an NTA, and then the next two are  
18 issued in NTA released, issued in NTA detained.

19 It's a binary choice and yet the numbers  
20 for CBP there shows zero across the board.

21 Q. But you haven't named any experts just now,  
22 have you?

23 A. I'm speaking about other experts in my  
24 field, other individuals that I consider to have  
25 expertise with respect to this.

1 Q. Okay. But you didn't put those names into  
2 your report, did you?

3 A. No, I did not.

4 Q. Okay. In paragraph 66 you talk about  
5 cartels.

6 Do you see that?

7 A. I do.

8 Q. Why did you write about cartels here  
9 with -- why are you writing about cartels here?

10 A. Because it's very important. Again, I've  
11 referenced back to Chief Scott's September 2021  
12 letter to Congress where he talked about how on the  
13 other side of the border, individuals associated with  
14 the cartels sent -- control the migrant flow so they  
15 can create what are called controllable gaps that  
16 they then use to send other migrants who don't want  
17 to be caught with drugs and other contraband into the  
18 United States.

19 Also, reporting indicates that they charge  
20 a PISO or a tax -- Madam Transcriber, P-I-S-O -- with  
21 respect to the individuals who come to the United  
22 States, if they don't pay that PISO, they're not  
23 allowed to cross.

24 Q. How long have the cartels, in your opinion,  
25 been in charge of who can and can't enter the United

1 States?

2 A. With respect to this particular flow, it is  
3 a rather recent phenomenon in my experience.

4 Q. Okay.

5 A. The Mexican government has been at war with  
6 the cartels for -- again, war is sort of shorthand,  
7 but they've been battling the cartels since the  
8 presidency of Vicente Fox back in the early 2000s,  
9 and the Mexican government has been attempting to  
10 tamp down those organizations.

11 There was certainly control -- attempted  
12 control of narcotics coming into the United States  
13 that provided those individuals with money. But a  
14 border that is viewed as accessible provides them  
15 with an opportunity to make more money and create  
16 those controllable gaps.

17 Q. During let's say the years of 2017 through  
18 December of 2019, did the cartels have power about  
19 who was entering the United States?

20 A. There was certainly cartel activities on  
21 the other side of the border in areas. There was a  
22 certain level of cartel activity at that time with  
23 respect to controlling their territory.

24 They would charge fees, basically, to  
25 smugglers who would bring those individuals into the



1 United States.

2 Q. Thank you.

3 A. But please understand that with respect to  
4 the smugglers, the cartels, normally they're two  
5 different groups of individuals. So with respect to  
6 that, again, it's sort of a symbiotic relationship.  
7 Sometimes it can be an ugly symbiotic relationship.

8 Q. Thank you. Go back one notch to paragraph  
9 65, please. One moment, please.

10 So if you're looking at paragraph, there's  
11 a couple -- there's a couple-lines sentence, then a  
12 block quote and a line and a half of text that you  
13 wrote, so two lines, indent pull quote, then your  
14 quote, correct?

15 A. That's correct, Counsel.

16 Q. I'm just going to read the stuff that you  
17 wrote, not the pull quote. Okay?

18 A. Okay.

19 Q. "In recent congressional testimony, I  
20 estimated the number of aliens released into the  
21 interior of the United States during the Biden  
22 administration" -- then you have the pull quote.  
23 Then you say, "My calculation based on data released  
24 in September 2023 through the end of August is  
25 2,390,584 illegal migrants released."

1 Did I read your words correctly?

2 A. You did, Counsel.

3 Q. And then a 30 and a footnote down to a  
4 website, right?

5 A. That is correct, Counsel.

6 Q. Where did that number come from, that  
7 2,390,584?

8 A. Yeah, it's interesting because I don't want  
9 to say that -- and again, it's sort of, you know,  
10 with respect to the work that I do. And, you know,  
11 as I indicated before, I bring the work that I do --  
12 you know, it is what I do. It's my job.

13 There was no full accounting of the number  
14 of border patrol -- the number of releases under the  
15 Biden administration, so I had to survey documents  
16 that had been produced that were required to be  
17 produced by Judge Matthew Kaczmaryk in Texas versus  
18 Biden when the Supreme Court issued its decision of  
19 Biden versus Texas.

20 And then based upon custody and transfer  
21 statistics information that was provided by CBP with  
22 respect to border patrol, again, I didn't have it  
23 with respect to OFO, the Office of Field Operations.

24 And so all of my -- the information that I  
25 provided was based on open source reporting, but I

1 had to pull it from a number of different data  
2 points.

3 Q. Okay. Did you list those many data points  
4 here in your expert report, please?

5 A. No, I did not. Probably if you -- to my  
6 testimony, I explained where the information came  
7 from.

8 Transparency has been a real problem with  
9 respect to this administration in getting solid  
10 numbers on releases. So I relied upon congressional  
11 testimony or congressional releases, open source  
12 evidence and things like that.

13 Q. Okay. But whether the numbers are easy to  
14 get or not, you're telling me now that you have  
15 various sources that you used to put that number  
16 together, correct?

17 A. I did, Counsel.

18 Q. And you don't list those sources here in  
19 your expert report, do you?

20 A. I do not.

21 MR. ST. JOHN: Asked and answered.

22 MR. SCHULTZ: Scott, you cut out there.

23 I'm going to let you please say your objection  
24 again so it's clear for the record.

25 MR. ST. JOHN: Asked and answered.

1 MR. SCHULTZ: Thank you, Scott.

2 THE WITNESS: But that is where I got it  
3 from.

4 BY MR. SCHULTZ:

5 Q. So you said various documents. Can you  
6 tell me now, please, what those documents are, even  
7 though they're not in the expert report?

8 A. Sure. They are monthly disclosures in  
9 Texas versus Biden, from the disclosures by DHS, the  
10 CBP custody and transfer statistics. Those are the  
11 main sources that I was able to get them from.

12 More recently, the House Judiciary  
13 Committee has released numbers with respect to  
14 requests that they've made of Congress for that  
15 information.

16 With respect to ICE, individuals who have  
17 been transferred from CBP to ICE and CBP OFO, those  
18 numbers are available. So the congressional numbers  
19 helped, but I didn't have those congressional numbers  
20 at the time that I drafted this.

21 Q. And your expert report doesn't show how you  
22 put those numbers together to reach this number, does  
23 it?

24 A. It does not.

25 Q. Does your congressional testimony march

1 through the math that you used?

2 A. No, but things that I've written in the  
3 past actually contain a running summary of that.

4 Q. Okay. Do those things that you've written  
5 in the past go through all of your math number by  
6 number to show how you arrived at the conclusion?

7 A. Generally, yes.

8 Q. Can you tell me which documents of yours in  
9 the past have that math, please?

10 A. Sure. Things that I've written from the  
11 center with respect to tabulating the disclosures  
12 monthly as they've been created.

13 Again, I write a lot, so I can't tell you  
14 the specific documents, but I do go through to  
15 calculate them and I do provide the actual number.

16 Generally when I'm writing for the public,  
17 I try to round it off or round it up. What I was  
18 doing then, I actually provided the actual data  
19 points.

20 Q. When you say you were doing that, what does  
21 the "that" refer to, please?

22 A. Monthly calculations to this and it's one  
23 of those things that a lot of congressional staff, a  
24 lot of people in the press ask me for with respect to  
25 that because I really -- until the House Judiciary

1 Committee compiled its report, I really was pretty  
2 much the basic source for that information, because I  
3 did the math.

4 Q. Okay. If you can't remember with -- can  
5 you remember with any more detail right now what  
6 those publications are that you did for CAS that have  
7 your math?

8 A. I really can't, but if you go to the  
9 website -- if you go to the disclosures in Texas  
10 versus Biden, you can actually compile the numbers as  
11 well.

12 Q. Okay.

13 A. And there's more documents that were  
14 provided by DHS, CBP, and ICE.

15 Q. Okay. I want to make sure you finished.  
16 Was there anything else? I think we stumbled over  
17 each other there for a second.

18 A. No, that's it.

19 Q. Okay. Thank you. Thank you for letting us  
20 know so we can call up numbers ourselves, but what I  
21 am most interested in is the numbers that you put  
22 together. If you don't have that information in your  
23 head now, that is fine. We will send an e-mail to  
24 you, though, in writing, calling for you to please  
25 give us a list of those publications that you have

1 done so that we can see what you've done. So I just  
2 want to give you a heads up on that.

3 A. Okay. Just to be clear, you want me to  
4 give you numbers that were actually provided by DHS?

5 Q. We're going to ask you to simply refer us  
6 to what you just mentioned a minute ago. You said  
7 there's various numbers that you put together for CAS  
8 on a monthly basis, and you said that the  
9 publications that you give to CAS show your math. So  
10 that's what we're going to call for, the publications  
11 that you just mentioned that show your math.

12 A. Okay.

13 Q. Thank you. I need a moment here, please.  
14 Thank you.

15 So even if you can't recall those articles  
16 right now, can you please walk me through the  
17 methodology that you used, if you remember, please.

18 A. Sure. I would go to the disclosures in  
19 Texas versus Biden and they would break it down into  
20 ICE and ICE releases from the border, CBP releases  
21 from the border, both border patrol and OFO.

22 Q. What was that last acronym that you used,  
23 please?

24 A. OFO. I apologize. I've referenced that  
25 before, Office of Field Operations.

1 Q. Thank you very much. Most of these  
2 acronyms I know. There's a few I don't. Even for  
3 the ones I do, it helps to repeat just to make sure  
4 we're all on the same page. Thank you.

5 So something else, I just want to make sure  
6 I have the right language here. Now, if you turn a  
7 little bit further down in paragraph 67, at the last  
8 sentence there, you say, "And the Biden  
9 administration is seeking to make the situation worse  
10 by cutting ICE funding."

11 Do you see that?

12 A. I do, Counsel.

13 Q. Did I read that last sentence correctly?

14 A. You did, Counsel.

15 Q. There's a footnote there, footnote 34,  
16 which then goes to a DHS website that you have at the  
17 bottom of the page there; is that right?

18 A. It is correct.

19 Q. So let me ask you first of all, that  
20 footnote -- I'm going to work backwards a bit. Does  
21 that footnote, does the -- does the document that you  
22 cited in that footnote, does it say that the Biden  
23 administration is seeking to make the situation  
24 worse?

25 A. No, the reference to the footnote is by



1 cutting ICE funding.

2 Q. By cutting ICE funding. I see. Like I  
3 said, I'm going to back into this, so I appreciate  
4 your patience.

5 So let's just start with the start of the  
6 sentence: "Biden administration is seeking to make  
7 the situation worse" is what you wrote.

8 What do you mean by "situation," please?

9 A. The situation with respect to the crisis at  
10 the southwest border with respect to the release of  
11 migrants into the United States.

12 Q. Okay. And what do you mean by "worse,"  
13 please?

14 A. Exacerbated. The Biden administration has  
15 asked Congress to cut the amount of money that it has  
16 for DHS funding both in FY -- in its FY 2023 and FY  
17 2024 budgets, from 34,000 down to 25,000.

18 Q. Okay. So --

19 A. So it would actually limit the amount of  
20 detention space that it had.

21 Q. I'm sorry, I thought I just heard a noise.  
22 Is everyone okay?

23 A. Yeah.

24 MR. ST. JOHN: Let's clarify the record. I  
25 think you're talking about funding for detention

1 beds; is that correct?

2 THE WITNESS: That's correct.

3 MR. ST. JOHN: Okay.

4 BY MR. SCHULTZ:

5 Q. Okay. Thank you. And again, I heard a  
6 noise. Just want to make sure that no one is in  
7 trouble.

8 So you also mentioned -- we spoke about  
9 detention beds a little bit earlier. I'm not going  
10 to go back into that, but you also say "cutting ICE  
11 funding;" is that right, at the end of that sentence?

12 A. That's correct, Counsel.

13 Q. And you have the Biden administration  
14 cutting ICE funding, right?

15 A. It's seeking to make that worse. I  
16 apologize, Counsel. I do have to clarify the record.  
17 It's seeking to make that worse by cutting ICE  
18 funding. Appropriations are set by Congress and they  
19 send a request to Congress for funding.

20 Q. And that's kind of what I'm getting at  
21 here. It seems that what you're saying here is that  
22 the Biden administration is seeking to make things  
23 worse and the way that it's seeking to make things  
24 worse is by itself cutting ICE funding; is that  
25 accurate or not accurate, what I just said, as to

1 what your thoughts are?

2 A. Regrettably this is one of the imprecisions  
3 of the English language. The "seeking" actually  
4 modifies "to make the situation worse." "By cutting  
5 ICE funding" would be through the appropriations  
6 process.

7 Q. So does the Biden administration, meaning  
8 the executive branch, do they have the power  
9 unilaterally to cut ICE funding in the United States  
10 government system?

11 A. They do have the ability not to utilize ICE  
12 detention space. With respect to ICE funding, it's  
13 interesting because it's 8 USC 1368 requires DHS, on  
14 a semi-annual basis, to send a report to Congress  
15 that talks about the amount of funding that it will  
16 need to inform that congressional answer -- that  
17 estimate.

18 To the best of my knowledge, they haven't  
19 sent that report. What they do send is the budget  
20 for DHS to Congress.

21 Q. And I think we both know the answer, but  
22 just to be clear, it's Congress that sets the budget,  
23 correct?

24 A. At the request of the president, and of  
25 course they have their own deliberations.

1 In the absence of other information, again,  
2 the report that's required under 1368, they're  
3 relying upon what the administration says is the  
4 appropriate amount. But of course, they do have  
5 their own appropriations system with discussion and  
6 debate.

7 In fact, I think in the 2023 budget,  
8 notwithstanding the fact that the Biden  
9 administration asked for a cut, they let detention  
10 bed space static.

11 Q. Does Congress always follow what the  
12 executive wants in budgets from year to year?

13 A. No. Congress has authority -- is informed  
14 by the president, but they have their own independent  
15 authority to do that.

16 Q. This is going back outside the scope of  
17 your report: Didn't the founding fathers say that  
18 Congress has the power of the purse; isn't that a  
19 phrase you've heard?

20 A. It's a phrase I've heard. It's a phrase  
21 I've used, correct.

22 Q. Is that correct?

23 A. Congress does have the power of the purse,  
24 but they rely upon the executive branch with respect  
25 to the amount of funding that they need.

1 Q. When you say "rely on," what do you mean by  
2 that, please?

3 A. So if the administration says that it  
4 doesn't need more detention beds, that it can handle  
5 the situation perfectly fine without it, that is  
6 definitely something that is going to inform  
7 Congress' discussions.

8 Q. Okay. Does Congress sometime put things in  
9 the budget that the executive doesn't want?

10 A. They do.

11 Q. Okay.

12 A. As happened in the FY 2023 budget.

13 Q. Has happened in the FY 2023 budget; is that  
14 what you just said?

15 A. Yeah, with respect to detention beds, as I  
16 alluded to before.

17 Q. Thank you. Again, just wanted to make sure  
18 that I heard the -- I would say words, but heard the  
19 letters and numbers correctly. So thank you.

20 A. Thank you. By FY, I mean fiscal year.

21 Q. One moment, please. Thank you.

22 I'm sorry, I sometimes am pressing the  
23 button here too many times.

24 A. I saw what happened.

25 Q. Thank you.

1 A. Thank you, Mr. Schultz.

2 Q. Just to follow up on what you were saying  
3 about the detention beds, weren't there COVID  
4 restrictions on that?

5 A. There were COVID restrictions on the  
6 detention beds. There were lawsuits that placed  
7 COVID restrictions on detention.

8 Q. And can you tell me a bit more about that,  
9 please?

10 A. I can't remember the cases in particular.  
11 I know the one had to do with Adelanto, which is a  
12 detention facility in California. And in fact, ICE  
13 just announced they're shutting down Adelanto,  
14 notwithstanding the fact -- the Biden administration  
15 has the ability to go back and ask those restrictions  
16 to be lifted. In the case of Adelanto, it doesn't  
17 appear they did.

18 Q. Okay.

19 A. Madam Transcriber, A-d-e-l-a-n-t-o.

20 Q. Capital A usually, right?

21 A. Capital A, yes.

22 Q. Thank you. So still staying with paragraph  
23 67, the first part of that sentence, at least what I  
24 view as the first part of that sentence, to read it,  
25 "And the Biden administration is seeking to make the

1 situation worse."

2 Just referring to that part of the  
3 sentence, please, you don't have any citation for  
4 that, do you, in your expert report?

5 A. It's the cutting ICE funding. It is a  
6 natural circumstance that flows with respect to daily  
7 detention beds. There have been tensions not only  
8 within this administration, with respect to prior  
9 ones, with respect to utilization of detention beds.

10 Q. I think we've already covered that ground  
11 then. Okay.

12 Let's skip ahead a little bit to paragraph  
13 93, which I know is a little bit of a jump forward.  
14 I like to make sure I have this right here.

15 A. You got it. 93 has to do with the latest  
16 asylum IFRS.

17 Q. I just want to make sure that my notes are  
18 matching up to what I have here.

19 There we go. So you talked about -- in the  
20 second sentence it talks about information between  
21 June and September 2022; is that right?

22 A. That's correct, Counsel. June of 2023.

23 Q. What I have is between June and September  
24 2022, column, asylum officers conducted 572 AMIs.  
25 That's the second sentence of paragraph 93.

1 A. I apologize. I was looking at 94.

2 Q. That's okay.

3 A. Yeah, I'm looking at it.

4 Q. Okay. So I'm not so much focussing on the  
5 year, which is 2022, but it says months June and  
6 September. Do you see those there?

7 A. I do, Counsel.

8 Q. And are you looking at paragraph 93?

9 A. I am, Counsel.

10 Q. Thank you. And that's four months, right,  
11 inclusive?

12 A. That is correct, Counsel.

13 Q. Okay. So going back a little bit to push  
14 and pull factors, let me ask a foundation question  
15 here.

16 Are you saying that the data that you --  
17 that you discuss there is something that contributed  
18 to the pull under the IFR that led migrant flows to  
19 increase in the United States?

20 MR. ST. JOHN: Objection.

21 THE WITNESS: That actually doesn't  
22 reference that in that paragraph, sir.

23 BY MR. SCHULTZ:

24 Q. Okay. Is that what you were getting at or  
25 did I kind of misunderstand what you were trying to



1 get at there?

2 A. No, I was explaining the implementation of  
3 the IFR there.

4 Q. So you are speaking about the  
5 implementation of the IFR then?

6 A. That's correct.

7 Q. Okay. Is it your opinion -- and I'm not  
8 saying that you have this here, I'm just saying is it  
9 your opinion now speaking to me, that four months of  
10 data would be enough to influence the pull strength  
11 that might lead more people to migrate to the United  
12 States?

13 A. The issue with respect to this particular  
14 IFR is the expansion of it. At the time that the  
15 administration actually issued the IFR, they  
16 announced that it was going to be implemented  
17 gradually as it went forward.

18 So the bigger implementation is with  
19 respect to the increase in asylum grants based on the  
20 IFR vis- -vis the asylum grants by immigration  
21 judges. It would increase the amount.

22 So I believe there were 325,000 asylum  
23 claims filed with the DOJ in FY 2023. Again, the  
24 majority of these asylum claims go to the immigration  
25 court. DOJ also keeps statistics on cases arising

1 from a credible fear claim.

2 So with respect to that, there is a  
3 significant differential. It's actually 11.63  
4 percent.

5 The more cases that were transferred over  
6 to AOs under the IFR, the more grants there are going  
7 to be, the larger it would grow. It's a very small  
8 population at this juncture.

9 Q. So the fact that it's a small population in  
10 your opinion, does that make the pull factor of the  
11 IFR less strong?

12 A. The gradual implementation of it does  
13 except for the fact that DHS continues to release  
14 individuals to go to immigration court with NTAs to  
15 apply for asylum or not.

16 Q. Okay. So I suppose what I'm getting at  
17 here -- this is funny, you might remember a little  
18 bit ago I asked you to walk me through how the  
19 communication would work for a pull factor. Then you  
20 gave me an answer.

21 Do you remember that you answered that  
22 question?

23 A. Yeah, I do.

24 Q. So I'm going to ask a similar question  
25 here. So you just told me that it's a small sample

1 and that it's an implemented -- incremental rollout  
2 of how this is being applied; is that fair?

3 A. That's correct, Counsel.

4 Q. So you don't have a crystal ball and the  
5 migrants don't have a crystal ball, correct?

6 A. Correct, Counsel.

7 Q. So walk me through, please, how this is  
8 going to be a pull factor then that has any strength.

9 Are you saying that people will hear that  
10 there is a new program that is now being executed and  
11 that the new program is quite small, though who knows  
12 if it gets bigger or not, given the lack of a crystal  
13 ball; and given that, are you saying that that's  
14 enough force to make a pull factor to get people to  
15 migrate to the U.S.?

16 MR. ST. JOHN: Objection. Vague and  
17 misleading.

18 BY MR. SCHULTZ:

19 Q. I'm just asking if that's what he said. He  
20 can answer any way he wants.

21 A. With respect to what I said, when this  
22 comes up to scale, which you know is the anticipation  
23 of this rule, the number of individuals who are  
24 released under the parol provision for individuals  
25 facing credible fear and the number of people who are

1 granted asylum will create a very significant pull  
2 factor for individuals to come to the United States.

3 Q. Is the pull factor significant now?

4 A. It was gradually implemented, so the answer  
5 to that is it's de minimis.

6 Q. So let's look at logistics a little bit.  
7 It's 1:18 p.m. We've been going a little bit over  
8 three hours. Just about three hours once you take  
9 the breaks into account. And it's lunchtime, at  
10 least here in the east coast.

11 MR. SCHULTZ: Scott, apologies, Louisiana  
12 is one hour off, correct? One hour difference.  
13 Sorry, I'm using east coast norm there, which I  
14 should not do.

15 Louisiana is one hour earlier compared to  
16 the east coast where North Carolina and D.C.  
17 are, right?

18 MR. ST. JOHN: This is a fine time for a  
19 lunch break, yeah.

20 MR. SCHULTZ: That's where I'm going.

21 THE WITNESS: I'm perfectly happy to keep  
22 going.

23 MR. SCHULTZ: I understand that. We have  
24 folks here who I know need to eat. And if I  
25 don't get food into my system before too long, I

1 might start to feel it also.

2 (RECESS TAKEN.)

3 BY MR. SCHULTZ:

4 Q. So let's turn to page 17 of your report,  
5 please, Judge.

6 A. Yes, Counsel.

7 Q. I couldn't hear you. I'm so sorry.

8 A. Yes, Counsel.

9 Q. Thank you. Two-thirds of the way down,  
10 three-fourths of the way down it says the asylum IFR.

11 Do you see that there?

12 A. Page 17?

13 Q. That's right, sir. It's just a subheading.

14 A. Yes. Yes, I do see it. Yes.

15 Q. Okay. So we've been using the term IFR,  
16 and I just wanted to -- I think we all know what it  
17 means, but let's just make sure.

18 Can you tell me what that acronym stands  
19 for, please?

20 A. It's the Interim Final Rule on the asylum  
21 officer rule that creates the IMA system process and  
22 it was published on March 29th, 2022.

23 Q. And just so we're all on the same page,  
24 again, Scott, I understand the record will speak for  
25 itself. Just so we're all on the same page, if you

1 know it, do you know the official citation to that?

2 A. I could look it up.

3 Q. That's okay. But you gave us a date, so  
4 that's how we're going to make sure we're all on the  
5 same page about what it's referring to. I wanted to  
6 pin that one down.

7 A. Very good.

8 MR. SCHULTZ: Scott, did you have something  
9 to say there?

10 MR. ST. JOHN: No.

11 BY MR. SCHULTZ:

12 Q. Okay. So I have a few questions, not  
13 surprisingly, about the IFR then.

14 First of all, can you tell me your  
15 understanding, please, of what it says?

16 A. The IFR sets up a process for aliens who  
17 have received positive credible fear determinations  
18 under section 235(b)(1) of the INA, to have their  
19 applications maintained and adjudicated by asylum  
20 officers, not immigration judges in the course of  
21 removal proceedings.

22 Q. Okay. Thank you. If you look at paragraph  
23 69, I'm going to read the first part of it, but we  
24 can talk about more if you need to.

25 It says "EOIR and the USCIS explained that

1 as a number of asylum claims at the southwest border  
2 has skyrocketed over the years." And the sentence  
3 goes on. Do you see that?

4 A. I do, Counsel.

5 Q. Okay. And that's basically -- paragraph  
6 69, bottom of the page 17 over to page 18, right?

7 A. Correct, Counsel.

8 Q. Do you agree with what I just read from  
9 that paragraph? I mean, you wrote it.

10 MR. ST. JOHN: Objection. Vague.

11 THE WITNESS: That's a correct citation to  
12 the asylum rule.

13 BY MR. SCHULTZ:

14 Q. Okay. Do you agree that the number of  
15 asylum claims at the southwest border has skyrocketed  
16 over the years?

17 A. Yes, I do.

18 Q. How many years?

19 A. Well, it really began to jump toward the  
20 end of 2019 and has increased throughout then to  
21 2023.

22 Q. Okay. So thank you. Just moving a couple  
23 of paragraphs later, paragraph 71, page 18. That's  
24 basically a couple -- a line and a half from you plus  
25 a pull quote, plus two pull quotes.

1 Do you see that?

2 A. I do, Counsel.

3 Q. Okay. And on the second pull quote, this  
4 is -- I'm sorry, let me back up. The pull quote,  
5 both of them are from 46908, 46909, right? That's  
6 what you have there at line 26?

7 A. Yes, that is correct. And I can't remember  
8 whether that was from the JNPRM or the IFR. That's  
9 the Joint Notice of Proposed Rulemaking.

10 Q. That was my next question. Thank you so  
11 much.

12 And the second pull quote there says,  
13 quote, "The ability to stay in the United States for  
14 years waiting for an initial decision may motivate  
15 unauthorized border crossings by individuals who  
16 otherwise might not have sought to enter the United  
17 States and who lack a meritorious protection claim."

18 Is that the start of the second pull quote  
19 there in paragraph 71?

20 A. It is, Counsel.

21 Q. And do you agree with what that sentence  
22 says?

23 A. Yes.

24 Q. Okay. And then you say then that the delay  
25 is a pull factor?



1           A.     The delay facilitates people living and  
2     working in the United States so that it creates a  
3     pull factor.

4           Q.     Okay. Thank you.

5                     How does it facilitate? How does that  
6     delay facilitate people living and working in the  
7     U.S.? Can you just walk me through your chain of  
8     thought there, please?

9           A.     Sure. In a couple of different ways.  
10    First, the delay allows people to live and work into  
11    the United States -- I'm sorry, live in and work in  
12    the United States, which it allows them to make money  
13    here, live their lives here, send their kids to  
14    school here, and to make money in this country and  
15    build up equities.

16          Q.     And the thing about the delay allows all of  
17    that to happen, right?

18          A.     That's correct, Counsel.

19          Q.     Okay. Thank you. Okay. Let's turn over  
20    to paragraph 74 then, please. I'm just going to find  
21    my spot here for a moment. Thanks for your patience.

22          A.     Page 19?

23          Q.     Page 19, yes. That is paragraph 74 at the  
24    bottom there, and it starts off where you wrote "EOIR  
25    and USCIS acknowledge that the proposed rule would

1 alter eligibility for" --

2 A. It reads "one benefit."

3 Q. Right. I'm sorry, I'm reading the wrong  
4 part of that paragraph. I apologize.

5 Let's skip to the next page, same  
6 paragraph, middle -- the second sentence there. It's  
7 right after it says table two, top of page 20.

8 First full sentence starts, "EOIR and USCIS  
9 nevertheless took the facially implausible position  
10 that there would be no impact on state governments,"  
11 end quote, though the sentence does continue.

12 Do you see where I wrote that?

13 A. Yes, Counsel.

14 Q. I'm sorry, do you see where you wrote that?  
15 I'm sorry.

16 A. I do, Counsel.

17 Q. Thank you. Why is that facially  
18 implausible?

19 A. Because by releasing individuals into the  
20 United States more quickly it's going to make them  
21 eligible for public benefits such as Medicare, SNAP,  
22 TANF, and will allow them to then immigrate more  
23 immediate relatives to the United States that would  
24 again further draw down those means-tested public  
25 benefits, and also, if they brought children to the

1 United States would impose a cost on the schools.

2 Q. Now, that sentence in the middle does have  
3 a citation that says see id. at 46,925, table two.  
4 Do you see that?

5 A. I do, Counsel.

6 Q. Does that citation say that it's facially  
7 implausible?

8 A. I'd have to take a look at the citation,  
9 Counsel.

10 Q. Do you think you'd remember if there were a  
11 federal document that calls it facially implausible  
12 in your field?

13 A. I probably would. I have a feeling that it  
14 doesn't have the facially implausible part on it.

15 Q. Okay. So with the facially implausible  
16 part, do you have any evidence that it's facially  
17 implausible?

18 A. Well, I have evidence that it's facially  
19 implausible for the reasons that I stated before.

20 Individuals who are illegally present in  
21 the United States are eligible for Medicare except  
22 for emergency Medicare. They're not eligible for  
23 SNAP or TANF. There's also an increase in  
24 incarceration cost that is possible as more people  
25 come into the United States. And again, the

1 education cost that I referenced before.

2 One other thing that is facially  
3 implausible is that the rule itself talks about the  
4 effect it's going to have on the wages and working  
5 conditions of Americans. And again, you know, we  
6 talked about the benefits to businesses, but it  
7 didn't talk about the detriments to workers, who  
8 would then have to use those means-tested public  
9 benefits.

10 Q. So at page 20, paragraph 78 --

11 A. Yes, Counsel.

12 Q. -- you talk about -- you talk about -- I'll  
13 use the word myself, but you don't use this word, but  
14 a delay of 21 days after the noncitizen has been  
15 served a record for positive credible fear  
16 determination.

17 Do you see that in 78? That's quoting the  
18 federal regulation.

19 A. I do see that, Counsel.

20 Q. And you didn't use the word "pause" or  
21 "delay" there though, right?

22 A. I did not, Counsel.

23 Q. Okay. But that's -- is it fair to say that  
24 that's what this calls for, that at a certain point  
25 there's a 21-day period where the case cannot go

1 forward for 21 days; is that right?

2 A. It specifically calls for that and that was  
3 a provision that was added between the Joint Notice  
4 of Proposed Rulemaking and the Interim Final Rule.

5 Q. Okay. So I'm going to ask you a few  
6 questions about this. Let's take a few steps back,  
7 first of all.

8 Under federal asylum, you're familiar with  
9 federal asylum law from your experience in  
10 immigration law, right?

11 A. Yes, sir, I am.

12 Q. Under federal asylum law, how long does  
13 someone have to file for asylum after they set foot  
14 in this country, absent some special circumstances?

15 A. One year.

16 Q. One year. Okay. And I'll ask a  
17 straightforward question: What's longer, one year or  
18 21 days?

19 A. One year is longer than 21 days, Counsel.

20 Q. Okay. Now, in immigration court, there's  
21 actually several steps that go into someone's asylum  
22 application and consideration, right?

23 A. There are, Counsel.

24 Q. Okay. So the first is or one of the  
25 important ones that you just said, someone has to

1 file an asylum application within a year of their  
2 getting here, correct?

3 A. That is correct.

4 Q. Let's assume for the moment for this  
5 question that the case ends up in asylum court. Can  
6 immigration judges give extensions?

7 A. They can.

8 Q. Okay. And you were an immigration judge  
9 you said, right?

10 A. I was in a detained court. So efficiency  
11 was key in those cases, but I would grant brief  
12 continuances.

13 Q. When you say brief, how long would that be?

14 A. Generally one week, ten days.

15 Q. One week?

16 A. Yes.

17 Q. Seven to ten days?

18 A. Seven to ten days. It could be longer.

19 Q. Okay. So seven days is a third of that 21  
20 days there, right?

21 A. It is, correct, Counsel.

22 Q. Ten days is just under half of that 21  
23 days, right?

24 A. That's correct, Counsel.

25 Q. But you undoubtedly -- maybe you didn't.

1 Were you -- did you ever have communications with  
2 immigration judges who -- actually, you know what?  
3 Let me ask you this: I remember reading one of your  
4 columns, I can't remember which one, but I can find  
5 it if I have to, when you said how long it took you  
6 to decide an immigration case in your detained court.

7 Do you remember writing that in one of your  
8 columns or posts?

9 A. I do.

10 Q. Do you remember the number you gave there?

11 A. I believe it was 45 days.

12 Q. And to ask again an obvious question,  
13 what's longer, 45 days or 21 days?

14 A. 45 days is longer than 21 days.

15 Q. Thank you. Now, when you were an  
16 immigration judge in your detained court, did you  
17 ever talk to judges who either were on other sorts of  
18 courts or who knew about processes in other sorts of  
19 courts?

20 A. I did.

21 Q. And I'm being a bit vague here. I  
22 shouldn't be. When I say other sorts of courts, what  
23 I mean is nondetained court. Have you heard the  
24 phrase, nondetained court or nondetained docket?

25 A. Yes.

1 Q. Can you tell me what that means, please?

2 A. A nondetained docket is one in which the  
3 alien is not in NHS custody while the case is  
4 proceeding.

5 Q. And in your experience or your knowledge,  
6 do cases of nondetained dockets take longer to  
7 resolve than cases on detained dockets?

8 A. Unless, of course, they fail to appear at  
9 the initial master calendar, at which case there was  
10 an order for removal issued.

11 Q. I think I might have missed your last word  
12 there or so.

13 A. I apologize. You dipped out for a second  
14 there.

15 Q. That's okay. Let's take a minute and maybe  
16 let the technology catch its breath and then you can  
17 repeat it.

18 A. Were you asking me about something that I  
19 said?

20 Q. I missed the last couple words of your last  
21 answer, yeah.

22 A. I apologize. Unless they failed to appear,  
23 in which case they would be ordered removed in  
24 absentia.

25 Q. Okay. Thank you. And you probably don't



1 get in absentias very much in the detained docket  
2 anyway because folks are right there in detention,  
3 right?

4 A. That is correct, Counsel.

5 Q. But aside from the in absentias, do cases  
6 generally take longer in nondetained dockets than  
7 detained dockets?

8 A. They do, Counsel.

9 Q. Is it fair to say that it takes sometimes  
10 years to decide?

11 A. It can.

12 Q. On a nondetained docket?

13 A. It could take years for those to be  
14 adjudicated.

15 Q. And even if it can take years, under --  
16 tell me, is it -- tell me if you know this or not, if  
17 this is something you're familiar with: Have you  
18 heard about what the goal is for the executive office  
19 of immigration review and what their timeline is to  
20 resolve cases in on the nondetained docket? Have you  
21 ever heard of a goal for them to do that within a  
22 specific time?

23 A. The statutory goal is 180 days. Again, I  
24 was in a detained court, so anything that had to do  
25 with nondetained court is nothing I would have been

1 told about.

2 Q. Is 180 days more than 21 days?

3 A. 180 days is more than 21 days, Counsel.

4 Q. Okay. And is one way that the detained  
5 docket cases can take longer than 180 days or even  
6 longer than a year, is that because immigration  
7 judges on nondetained dockets sometimes give  
8 extensions that can last for a prolonged period of  
9 time?

10 A. If they're administratively closed, the  
11 average period of time that a case was  
12 administratively closed was longer. They can give  
13 extensions for longer periods of time based on the  
14 docket.

15 Q. Okay. So given the various time periods  
16 that we just spoke about, which are longer than 21  
17 days, is there -- let me actually -- let me focus  
18 your attention here just to make it easier. I think  
19 it's paragraph 92.

20 In paragraph 92 you talk about how the  
21 21-day delay -- that's where you use the word delay,  
22 paragraph 92 -- can lead to coaching and fraud. Do  
23 you remember writing that?

24 A. I do, Counsel.

25 Q. So for these other periods of time that we

1 just talked about in immigration court that are  
2 longer than 21 days, do those present similar  
3 opportunities for fraud and delay or is there a  
4 difference?

5 A. Well, there's a difference because under  
6 the Interim Final Rule, the IFR, the Credible Fear  
7 Interview is the asylum application. So for that  
8 reason, there is no delay for them to file the asylum  
9 application.

10 This is a delay that they don't give any  
11 reason for except for to consult with counsel and to  
12 supplement the record, to clean up things that they  
13 had said that -- and again, I'm not speaking  
14 generally. Fraud is a thing in immigration court.  
15 And we know that unscrupulous practitioners have in  
16 fact coached and drafted applications for aliens in  
17 immigration court.

18 So it is an issue for them with respect to  
19 the -- now I've lost my train of thought. Can you  
20 ask the question again?

21 Q. I think you've answered it. I was happy to  
22 hear your additional thoughts, though.

23 A. I want to make sure that I've answered it  
24 in full.

25 MR. SCHULTZ: I'll ask the court reporter

1 to read back the question, please.

2 (Court reporter read back the question:

3 "So for these other periods of time that we just  
4 talked about in immigration court that are  
5 longer than 21 days, do those present similar  
6 opportunities for fraud and delay or is there a  
7 difference?")

8 THE WITNESS: They offer similar  
9 opportunities for fraud and delay except for the  
10 fact that as soon as the asylum application is  
11 filed in immigration court, again, you have a  
12 limited opportunity to consult with counsel and  
13 to amend your application, but there will be  
14 questions that are raised about those  
15 amendments.

16 BY MR. SCHULTZ:

17 Q. Okay. When you were an immigration judge  
18 and someone had an asylum case in front of you, when  
19 the hearing started, the individual merits hearing  
20 started, did you ever ask the lawyer or the  
21 respondent if they wanted to or needed to amend or  
22 supplement their asylum application?

23 A. Yes. Actually, I would ask them, if it was  
24 their asylum application, if they wanted to amend or  
25 to change it in any way, or for ICE counsel to ask

1 questions about the amendments in question.

2 Q. Okay. Did you do that routinely?

3 A. Yes.

4 Q. Did that open the door for fraud and  
5 coaching when you did that?

6 A. It presented -- it did open the door for  
7 fraud and coaching, but it also presented a situation  
8 where people realized -- where government counsel  
9 understood that there had been a change in the record  
10 and could ask about that particular change.

11 Q. Okay. Let's take a moment here and put  
12 things on mute. Thanks.

13 Thanks. We were trying to get some of our  
14 documents in line so it's less improvised as we're  
15 trying to show you the next documents.

16 I apologize again. I just noticed I have  
17 another mistake in my exhibit numbers. I just need  
18 another moment. Thank you.

19 I think I have my ducks in a row now.  
20 Apologize for that delay. Let's turn over to  
21 paragraph 88, please. I think that's on page 23.

22 A. Yes, Counsel.

23 Q. So I'm basing these new questions,  
24 addressing what you have there, when you talk about  
25 the USCIS director, Ur Jaddou. And you talked about

1 her in that paragraph, correct?

2 A. It's actually Ur Jaddou. Madam  
3 Transcriber, J-a-d-d-o-u.

4 Q. Thank you. Ur Jaddou. My apologies to you  
5 and the director if I mispronounced that.

6 So here you -- to summarize, please tell me  
7 if my summary is fair or not. Is it fair to say that  
8 you criticize her for distinguishing between services  
9 and enforcement within USCIS? Is that fair or would  
10 you say it differently?

11 MR. ST. JOHN: Objection. The document  
12 speaks for itself.

13 THE WITNESS: Yeah, that is fair.

14 BY MR. SCHULTZ:

15 Q. Thank you. Again, I apologize if this  
16 comes out as an obvious question. Do you know what  
17 USCIS stands for?

18 A. I do, Counsel.

19 Q. Can you tell me, please?

20 A. It's United States Citizenship and  
21 Immigration Services.

22 Q. Is the word "enforcement" in the title?

23 A. It is not.

24 Q. Okay. Does that change your view of what  
25 you wrote in that paragraph?

1           A.     Actually, no, because USCIS is actually  
2     part of DHS, which is an agency that was created to  
3     protect the Homeland Security. The entire agency  
4     has, to some degree, a law enforcement component.

5           There is actually also a branch within  
6     USCIS called the Fraud Detection and National  
7     Security Branch that is -- that was created  
8     specifically to protect the national security and to  
9     prevent fraud.

10          Q.     Thank you. Aside from what you just told  
11     me, do you have any evidence that you can point to  
12     for why enforcement should be the mission over  
13     services?

14          A.     Again, I participated in the drafting of  
15     the Homeland Security Act. The entire idea behind  
16     the Homeland Security Act was actually protecting the  
17     homeland from all, you know, possible harms that it  
18     may suffer, and that includes harms related to fraud,  
19     the possibility that individuals who posed a national  
20     security risk to the United States would be able to  
21     exploit the system in order to come here.

22          There is a law enforcement component to  
23     USCIS. And in fact, I believe section 235(b)(1) of  
24     the INA states that the asylum officer is supposed to  
25     order the alien removed if there is no finding of

1 welfare, which is a law enforcement activity.

2 Q. Thank you. Your words cut out for the last  
3 five seconds or so, if you could just repeat that  
4 last sentence, please.

5 A. I'm sorry. I don't know if that was on my  
6 end. I hope it wasn't.

7 Section 235(b)(1) of the INA directs the  
8 asylum officer to order the alien removed if there is  
9 no finding of credible fear, and that is a law  
10 enforcement activity.

11 Q. Thank you. Did Inspector Jaddou say that  
12 she was going to stop enforcing section 235(b)(1)?

13 A. It's actually Director Jaddou. Did she say  
14 that she was going to stop? What was the question  
15 again? I apologize.

16 Q. That's okay. Did she say that she was  
17 going to stop enforcing section 235(b)(1)?

18 A. She did not state that, but I conclude that  
19 the way this rule is written, it would definitely  
20 change section 235(b)(1) as Congress has written.

21 Q. So staying in that same paragraph, you  
22 wrote that the director, quote, "Has a reputation of  
23 hostility to border enforcement."

24 Do you see that?

25 A. I do, Counsel. And the next two lines



1 actually are the bases of support for that statement.

2 Q. Okay. When you say the next two lines, do  
3 you mean --

4 A. I'm sorry, the next sentence after that.

5 Q. Okay. So let me read this in the record.  
6 The record -- the sentence that I read says, "Jaddou  
7 has a reputation of hostility to border enforcement."

8 The following sentence says, "She spent  
9 time as the director of DHS Watch, a pro-amnesty  
10 nonprofit."

11 Is that the sentence you're referring to?

12 A. I'll correct what I said the first time.  
13 It's the next two sentences.

14 Q. Okay. And the following sentence is,  
15 "During that time she went so far as to call for  
16 Congress to pause CBP funding and referred to CBP as  
17 the 'personal malitia' to then-president Donald  
18 Trump."

19 A. That's correct.

20 Q. That is the sentence you're referring to?

21 A. That's correct, Counsel.

22 Q. So do those sentences show that she has a  
23 reputation of hostility or that you view her as being  
24 hostile in that way?

25 A. It would create a reputation of hostility

1 to law enforcement or to enforcement on its face.

2 Q. On its face. And what do you mean by "on  
3 its face," please?

4 A. The statement that customs and border  
5 protection is a personal malitia in carrying out its  
6 law enforcement functions and asking to pause  
7 funding. That evidences hostility to border  
8 enforcement on its face.

9 Q. Okay. Are there other parts of the  
10 government involved in border enforcement besides  
11 CBP?

12 A. With respect to border enforcement --

13 Q. I misspoke. I'm so sorry. Thank you.

14 Are there other parts of the federal  
15 government involved in immigration enforcement  
16 besides CBP?

17 A. Yes. U.S. Immigration and Customs  
18 Enforcement.

19 Q. Okay. Thank you.

20 A. Their jurisdiction is over activities in  
21 the interior and detention pending removal  
22 proceedings and removal.

23 Q. You don't have anything in paragraph 88  
24 indicating that Director Jaddou has ever criticized  
25 that part of the government, have you?

1           A.     I do not, counsel. The reference is to  
2 border enforcement in my prior sentence.

3           Q.     Okay. Let's turn a little bit to -- let's  
4 turn to paragraph 89 now and I'd like to talk a  
5 little bit about credible fear interviews, please.

6                     So please let me know when you flip there,  
7 but the questions are going to start off more  
8 generally, and not so much about the actual text of  
9 the paragraph.

10          A.     I'm ready to go.

11          Q.     So just to be clear, when you say AO, do  
12 you mean asylum officer?

13          A.     I do, Counsel.

14          Q.     And at various points either you or I might  
15 say CFI, does that mean Credible Fear Interview?

16          A.     Yes. It's not a term that I generally use.  
17 I generally just refer to credible fear, but if you  
18 use it as that, I will understand it.

19          Q.     Thank you. I will try to use the full  
20 words.

21          A.     You don't have to. I'll understand it now.

22          Q.     It's probably easier for everyone to have  
23 fewer acronyms, but thank you for indulging if I do  
24 slip.

25                     So what is -- in your own words, please,

1 what is an asylum officer Credible Fear Interview?

2 A. A Credible Fear Interview is a screening  
3 process that an asylum officer uses in order to  
4 determine whether there's a substantial likelihood  
5 that an alien who was subject to expedited removal  
6 would be eligible for asylum.

7 Q. Okay. And does the Credible Fear Interview  
8 performed by asylum officers only look to asylum or  
9 does it look to any other sort of protection?

10 A. By statute it does not look to any other  
11 form of protection except for withholding of removal,  
12 but I believe that the actual title is credible  
13 fear -- yeah, it would also look to statutory  
14 withholding under section 241(b)(3) of the INA. By  
15 regulation, protection under Article 3 of the  
16 Convention Against Torture has been added to that  
17 definition.

18 Q. When you're talking about statutory  
19 withholding, withholding of removal, what does that  
20 mean, please?

21 A. It's withholding of removal under section  
22 243(b)(1) of the INA. It is a former protection for  
23 individuals usually who aren't eligible for asylum,  
24 to prevent them from being removed from the United  
25 States.

1           So an order of removal is issued and then  
2           withholding is -- removal is withheld from a specific  
3           country. So withholding or removal is  
4           country-specific.

5           Q.     Okay.

6           A.     As you know from having been a judge, you  
7           order someone removed to a country or countries.

8           Q.     Thank you. And you also mentioned the  
9           Convention Against Torture. Can you please tell me  
10          what you mean by that?

11          A.     The Convention Against Torture is an  
12          international agreement that the United States has  
13          signed onto to prevent the United States from  
14          returning countries -- aliens to countries where  
15          they'd be subject to torture by or at the instigation  
16          or acquiesces of a government official or other  
17          person acting in official capacity.

18                 Torture has been defined by case law and by  
19          statute -- by regulation, not statute. There is no  
20          statutory provision except for the, FARRA, F-A-R-R-A,  
21          with respect to the Convention Against Torture or CAT  
22          as it's called.

23          Q.     Okay. Thank you. And CAT stands for  
24          Convention Against Torture; is that right?

25          A.     That is correct, yes.

1 Q. Thanks. And just to make sure that we're  
2 rounding out the corners here, we've been speaking of  
3 asylum. Can you just tell me your understanding of  
4 the definition of asylum itself, please?

5 A. Asylum is a form of relief that is granted  
6 to an alien who establishes either persecution or  
7 well-founded fear of persecution based on race,  
8 religion, nationality, membership in a particular  
9 social group or political opinion.

10 Q. Thank you. Turning back to the text of  
11 paragraph 89, you write, "AO credible fear interviews  
12 have historically been non-adversarial, in sharp  
13 contrast to the adversarial truth-finding in  
14 subsequent proceedings before an IJ."

15 Do you see that?

16 A. I do, Counsel.

17 Q. Okay. So what do you mean by  
18 non-adversarial?

19 A. Non-adversarial means that there is no --  
20 the process that we're going through right now,  
21 Counsel, is an adversarial proceeding. You are  
22 asking me questions on the record to probe the  
23 statements I've made and to impeach statements that  
24 I've made in the past. That's an adversarial  
25 proceeding. Courts are adversarial proceedings.

1           A non-adversarial asylum interview means  
2           that there is no government attorney, in this case  
3           from ICE, present at that to offer contrary evidence,  
4           to offer contrary evidence, to cross-examine the  
5           alien and to impeach the alien.

6           Q.    Okay.  Thank you.

7           And is a CFI non-adversarial?

8           A.    It is, Counsel.

9           Q.    Thank you.  At a CFI interview, at a  
10          Credible Fear Interview, that is, can the asylum  
11          officer ask questions?

12          A.    Yes.

13          Q.    Can credible fear interviews get  
14          confrontational or tense?

15          A.    It's never been my experience that that  
16          happens.  Sometimes if there's internal  
17          inconsistencies, asylum officers will ask about them  
18          and I've reviewed a lot of transcripts from asylum  
19          officer, CFIs, as you refer to them.

20          Q.    Okay.  Now, we spoke a moment about what  
21          asylum means and what withholding -- statutory  
22          withholding of removal means and what the Convention  
23          Against Torture means.

24                Does the Credible Fear Interview apply the  
25          same standard as any of those three types of relief

1 for protection?

2 A. It actually applies a lower standard with  
3 respect to statutory of withholding under section  
4 241(b)(3) of the INA with respect to the Convention  
5 Against Torture.

6 Q. Does it apply the same standard as is  
7 necessary for a final determination on asylum?

8 A. It does not. That's why Congress included  
9 the "substantial likelihood" language.

10 Q. Now, is the credible -- is the standard for  
11 credible fear interviews -- let me back up again.  
12 There's one other acronym that comes up, AMI, that's  
13 in your report, I believe. Can you tell me what AMI  
14 means, please?

15 A. Asylum Merits Interview under the Interim  
16 Final Rule.

17 Q. Okay. Thank you. And does an AMI have the  
18 same standard -- I'm sorry, I apologize. I'll skip  
19 the acronyms.

20 Does an Asylum Merits Interview use the  
21 same standard as a Credible Fear Interview?

22 A. It is supposed to use the statutory  
23 standard with respect to asylum statutory withholding  
24 under section 241(b)(3) as well as the regulatory  
25 standard for a torture convention claim.



1 Q. Thank you. I'm not sure I completely  
2 understood that. Let me --

3 A. I apologize. I can clarify. But go ahead  
4 and ask me. I'll explain.

5 Q. Let me break it down. So at a CFI -- I'm  
6 sorry, at a Credible Fear Interview, the ultimate  
7 standard for asylum relief is not applied, correct?

8 A. It is not.

9 Q. Okay. Is the ultimate standard for asylum  
10 relief applied at an Asylum Merits Interview?

11 A. It is supposed to be by statute and  
12 regulation.

13 Q. So does the statute and regulations state  
14 that the final asylum standard will be applied for  
15 Asylum Merits Interviews?

16 A. It does state that.

17 Q. Okay. Thank you. So is it fair to say  
18 that the standard that's applied in the Credible Fear  
19 Interview is different from the standard that's  
20 applied at the Asylum Merits Interview?

21 A. That is correct, Counsel.

22 Q. Okay. Thank you. So let's turn back in  
23 time a little bit to before the IFR, before the  
24 Interim Final Regulation was put into effect. Okay?  
25 So we're talking --

1 A. It's actually Interim Final Rule.

2 Q. I apologize. Interim Final Rule. Thank  
3 you. Let's turn back to time before that.

4 So before the IFR was ever implemented or  
5 even written, did asylum officers ever -- did asylum  
6 officers ever grant asylum in any context?

7 A. They did, through the affirmative asylum  
8 process.

9 Q. Okay. And what do you mean by the  
10 affirmative asylum process?

11 A. The affirmative asylum process is an asylum  
12 application filed in an asylum office by an alien,  
13 not citizen -- I apologize, I used a statutory term.  
14 Please forgive me -- who is present in the United  
15 States but is not in removal proceeding. That's  
16 called affirmative asylum.

17 Q. Is there another sort of asylum?

18 A. Defensive asylum.

19 Q. Okay. And when you say asylum, do you mean  
20 defensive asylum application; is that fair?

21 A. That is correct. It's a -- prior to the  
22 IFR, it was all on the I589, which is captioned  
23 Application For Asylum and Withholding of Removal.

24 Q. And is the actual asylum standard different  
25 in defensive asylum applications versus affirmative

1       asylum applications?

2           A.     It's the same statutory standard that's set  
3       forth in section 208 of the INA.

4           Q.     Okay. And would that also be true for what  
5       we call statutory withholding of removal and  
6       convention -- I'm sorry, let me start over.

7                     When asylum officers in the past have  
8       considered positive applications for asylum, could  
9       they also consider positive applications for  
10      statutory withholding?

11          A.     No, they do not.

12          Q.     Okay. What about the Convention Against  
13      Torture?

14          A.     They do not. A condition precedent to  
15      granting either statutory withholding under section  
16      241(b)(3) or withholding under the Convention Against  
17      Torture or deferral under the Convention Against  
18      Torture require a final order of removal. And for  
19      that reason, they don't have jurisdiction to  
20      adjudicate them.

21          Q.     So when we're talking about positive  
22      application for asylum, we're talking just asylum?

23          A.     We're talking about just asylum. That's  
24      correct.

25          Q.     Okay. Thank you. Given that, is the

1       asylum standard that asylum officers apply -- I'm  
2       sorry. Let me start over.

3               Is the asylum standard for positive asylum  
4       applications the same as those for defensive asylum  
5       applications?

6               A.     The asylum standard is the same except by  
7       statute.

8               Q.     Thank you. And how many years, if you  
9       know, have asylum officers in CIS been making the  
10      final decisions on asylum in positive asylum  
11      applications?

12              A.     In USCIS?

13              Q.     Let's limit it to that, yes.

14              A.     Since March 1st, 2003.

15              Q.     Thank you. Is that when the Department of  
16      Homeland Security was created?

17              A.     That's correct, Counsel.

18              Q.     About 20 years then, right?

19              A.     About 20 years, yes, Counsel.

20              Q.     Okay. Is there any reason to believe that  
21      asylum officers over 20 years or so have been making  
22      asylum determinations in affirmative asylum  
23      applications would have any reason to act in a  
24      different way when they're reviewing defensive asylum  
25      applications?

1           A.    I know that the standards for review  
2           affirmative asylum applications are not as robust as  
3           they are with the BIA system, Board of Immigration  
4           Appeals system, on review of immigration judge  
5           decision.

6                    Asylum officer decision are not publicly  
7           available documents. So I don't have any reason to  
8           believe that they are, but based upon the review  
9           standards, there's a distinct possibility that  
10          they're not.

11          Q.    And thank you for answering that. I had a  
12          little bit of trouble following that because of the  
13          pronouns. Let me try to break that down a little bit  
14          more then.

15                   Let's put aside immigration judges. Okay?  
16          If possible.

17          A.    Okay.

18          Q.    But my question is not on immigration  
19          judges, so my question is just on asylum judges. If  
20          you need to bring it in, by all means, please do.

21                   But what I'm trying to get at here is, if  
22          asylum officers have been making decisions on asylum  
23          for 20 years in the context of affirmative  
24          applications, what is to make you doubt they'll do  
25          any worse a job on defensive applications?

1           A.     There is no visibility in the system and  
2           all of the review that takes place with respect to  
3           those asylum officer decisions, it's entirely  
4           internal.

5                     You're not going to find a circuit court  
6           case that discusses that affirmative asylum  
7           application process because there is no judicial  
8           review of a grant.

9           Q.     So maybe I should ask a different question.

10                    Do you have any criticisms of the system  
11           that allows asylum officers to make determinations  
12           about asylum for affirmative applications of asylum?

13           A.     I do have concerns about the validity of  
14           that system, generally.

15           Q.     I think we stumbled on your last two words.  
16           Repeat those last two or three words, please.

17           A.     Generally was the last one.

18           Q.     Thank you. Are the concerns that you have  
19           the same for asylum officers making decisions in the  
20           positive or affirmative application context versus  
21           the defensive context?

22           A.     The defensive context is a proceeding in  
23           which it's an adversarial proceeding, as we stated  
24           before. And there is an opportunity for  
25           cross-examination and an opportunity for ICE to

1 review those or to appeal those decisions.

2 There is no opportunity for that -- those  
3 procedural safeguards aren't present in the  
4 affirmative asylum process.

5 Q. Okay. So when you talked about the  
6 adversarial, though, that's in the immigration court  
7 context, right?

8 A. That's correct, Counsel.

9 Q. And the positive -- the positive -- sorry,  
10 the decisions that asylum officers make to positive  
11 applications or affirmative applications for asylum,  
12 those are non-adversarial, correct?

13 A. The affirmative asylum process is not  
14 adversarial.

15 Q. Just like the process under the IFR is  
16 non-adversarial, correct?

17 A. That is correct, Counsel.

18 Q. So in that sense, they're parallel,  
19 correct?

20 A. The process under the IFR is parallel to  
21 the affirmative asylum process. It is not  
22 adversarial. In fact, it specifically calls it a  
23 non-adversarial interview in the IFR.

24 Q. Do you fear that there will be worse  
25 results under the IF R before asylum officers versus

1 positive applications for asylum before asylum  
2 officers?

3 A. By positive, do you mean affirmative asylum  
4 applications?

5 Q. I do. Thank you for that clarification.

6 A. Yeah, I think that it will probably be  
7 similar. I'm concerned that the applications as  
8 adjudicated by the -- under the IFR is going to be  
9 worse because many of the individuals who have -- who  
10 apply for affirmative asylum have actually been  
11 lawfully admitted to the United States.

12 They've been screened by a counselor or  
13 officer before they enter the United States or they  
14 came under the Visa Waiver Program. Counselor  
15 screening is one of those things that happens abroad.

16 For those individuals who enter illegally  
17 and apply for the affirmative asylum process, they  
18 actually have a footprint in the United States,  
19 something that we can look to to determine whether  
20 bars to asylum, as we've referred to them, may be  
21 present in a specific case.

22 We're not going to have that same level of  
23 trust in this process because, by definition, these  
24 individuals haven't been in the United States before  
25 or have only very briefly been in the United States.



1 Q. Let's talk about that counselor screening  
2 process for a minute.

3 When someone tries to come to the United  
4 States through a counselor screening process of  
5 getting a visa; is that what you're referring to?

6 A. I am, by the Department of State abroad.

7 Q. Does that screening take place for people  
8 who are coming on, for instance, tourist visas?

9 A. If they're not from a visa waiver country,  
10 it does include people who are coming here on tourist  
11 visas. People who are coming here from a visa waiver  
12 country perform an online application before they can  
13 come here.

14 Q. For the people who are not on the Visa  
15 Waiver Program, when they go to the state department  
16 consulate abroad, are they screened for asylum  
17 criteria?

18 A. They're not screened for asylum criteria.  
19 Section 212(a) of the INA contains a number of  
20 grounds of inadmissibility for aliens who are seeking  
21 to enter the United States. Amongst those grounds  
22 for inadmissibility are a national security risk and  
23 to determine whether they have a criminal history.

24 Because they are seeking a visa to come to  
25 the United States, the counselor or officer abroad

1 can check with the security system in that country  
2 and can require the applicant to provide a police  
3 report before adjudicating that.

4 Because the IFR considers the Credible Fear  
5 Interview to be the asylum application under section  
6 208.6, we can't make those counselor checks abroad  
7 based upon information that the applicant is included  
8 in the asylum application.

9 Q. Let's talk about what you said a few  
10 minutes ago about the concerns you have about the  
11 lack of an asylum application, which is also called  
12 an I589. Is that right that an asylum application is  
13 called an I589?

14 A. Yes, it is, Counselor.

15 Q. So why -- you mentioned that you have  
16 concerns to the fact that there's no asylum  
17 application under the IFR; is that right?

18 A. I do have concerns. I don't remember  
19 whether I specifically stated that.

20 Q. Right. My understanding is that you did  
21 have concerns. If I misspoke, I apologize.

22 What are those concerns and why do you have  
23 them?

24 A. The concerns are many. One, the I589 is a  
25 document that is signed under oath in which the

1 applicant averse to the duress in the statements that  
2 are made therein.

3 It also lays out the questions that are  
4 pertinent to the asylum withholding and CAT process  
5 with respect to that application. So you check boxes  
6 that say, I'm seeking asylum based upon particular  
7 social group or something like that.

8 That is a document that can then be used to  
9 challenge statements that are made in the course of  
10 the proceedings. In fact, it's very common for  
11 credibility determinations to be made based upon  
12 inconsistencies between the asylum application and  
13 the testimony of the respondent or applicant.

14 Q. And you talk about some of this in  
15 paragraph 95, right?

16 A. I'll take a look. Yes, I allude to this,  
17 but I talk about the difference of -- 95 actually has  
18 to deal with a slightly different issue.

19 Q. It says in the second line "Eliminating the  
20 requirement for applicants to file an asylum  
21 application will almost inherently increase the  
22 asylum grant rate."

23 A. Yeah, it will do so in a number of  
24 different ways; one of which is what I just described  
25 before with respect to the asylum grant rate, but it

1       also goes on to say that a number of individuals who  
2       end up in immigration court -- immigration court with  
3       respect to following a credible fear determination  
4       don't actually file applications for asylum, and  
5       therefore they don't get asylum.

6             Q.     You said almost inherently in paragraph 95.  
7       Why did you say almost? Why not just say inherently?

8             A.     I don't want to speculate too far in the  
9       future. Plainly, it would change the grant rate.

10            Q.     So does that mean that you do want to  
11       speculate a little bit into the future?

12            A.     It all depends upon whether they stick to  
13       the procedure in this rule or whether they go back to  
14       the I589 rule.

15                   Congress drafted section 208 or amended  
16       section 208 of the INA prefaced upon the fact that  
17       there would be an I589. They refer to the  
18       application and the I589 was a preexisting  
19       application at the time that they made that  
20       statement, which was in September 1996.

21            Q.     Is paragraph 95 speculation?

22            A.     No, it's not at all because, again, as I  
23       referenced before, there are a number of individuals,  
24       38 out of 100, who do not file I589s and, for that  
25       reason, don't get granted asylum.

1 Q. In paragraph 95 there's no citation or  
2 footnote, is there?

3 A. I believe that I've referred back to that  
4 document. That's a DOJ document that is on the EOIR  
5 website, but I believe that I referred to it  
6 elsewhere in the applications marked in the evidence  
7 in this case.

8 Q. Does paragraph 95 refer to that?

9 A. It does not, Counsel.

10 Q. Okay. So do you have any evidence to show  
11 that it's inherently going to increase the asylum  
12 grant rate?

13 MR. ST. JOHN: Objection. Asked and  
14 answered.

15 THE WITNESS: The statements that I just  
16 made before are the reasons why it will increase  
17 the grant rate. There is no document upon which  
18 the veracity of the alien -- as you know,  
19 Congress has made clear in section 208 of the  
20 INA, in the Real Idea Act, that that is a  
21 credibility assessment because Congress was  
22 concerned about credibility.

23 If you take away that application, that is  
24 one more thing that is not available to the --  
25 to any adjudicator to question the respondent

1 with respect to.

2 BY MR. SCHULTZ:

3 Q. Okay. And again --

4 A. Also, 38 out of 100 of them never file  
5 589s.

6 Q. So --

7 A. And it's a period FY 2018 to the fourth  
8 quarter of FY 2019.

9 Q. Let's go to the next paragraph, please.

10 It's one sentence. I'll read it here. It  
11 says, "Regardless, even if the grant rate did not  
12 increase, the asylum IFR would necessarily impact  
13 states by speeding grants of asylum and thereby  
14 increasing eligibility for certain public benefits."

15 Did I read that accurately?

16 A. You did, Counsel.

17 Q. Okay. Thank you. And do you have any  
18 footnotes or citations in paragraph 96?

19 A. No, but I believe that that is cumulative  
20 of other statements that I make in the application --  
21 or in the expert report.

22 Q. But you don't refer to those in paragraph  
23 96, do you?

24 A. I do not, Counsel.

25 Q. Let me ask you a bit about the substance

1       there. If the grant -- you're saying, even if the  
2       grant rate did not increase, you're saying that  
3       speeding grants of asylum would have an effect,  
4       right?

5           A.     That's correct, Counsel.

6           Q.     And you're saying it's speeding because of  
7       the IFR, right? That's what you put in line one  
8       there?

9           A.     That's correct, Counsel.

10          Q.     Does the speediness, to use a slightly  
11       different word, of the IFR that you're concerned  
12       about here, even if it leads to more grants, wouldn't  
13       it also by its speediness lead to an increased number  
14       of denials -- an increased rate of denials?

15          A.     No. Actually, because for -- denial isn't  
16       the right term. I believe that they -- yeah, denial  
17       would be correct in this context because the case  
18       would then go to the immigration court for further  
19       adjudication, and then to the board of immigration,  
20       appeals, potentially to the Court of Appeals under  
21       section 2.2.

22                 So there are more avenues for denial than  
23       there are for a grant.

24          Q.     Okay. Do all of the cases go to the  
25       immigration court that have been denied by the AO

1 under the IFR?

2 A. Under the IFR, the applicant actually has  
3 the ability to miss one application or one interview  
4 at least and then be interviewed again, and then the  
5 IFR sets up a process by which those cases in which  
6 asylum is not granted are referred over to the  
7 immigration court.

8 Q. Is it your understanding that some people  
9 after the initial denial say, okay?

10 A. It's not -- it's not set forth in the IFR.  
11 Given the fact that the IFR permits them to be  
12 released, they would probably say there is nothing in  
13 the IFR that requires them to be detained.

14 Q. Okay. Thank you.

15 Are there statistics that you know about  
16 that talk about the current speed of rates of  
17 granting, let's say the current efficiency of  
18 granting under the IFR?

19 A. With respect to time?

20 Q. That's right.

21 A. Not that I'm aware of.

22 Q. Still talking about the IFR. I'm going to  
23 change angles a little bit here. How are we on  
24 timing? I'm sorry? Do you need a break, sir? It's  
25 3 o'clock now.



1 A. No. We can keep going.

2 Q. We can keep going? Okay. Great. Thanks.

3 And folks here are okay? Ms. Marsh?

4 COURT REPORTER: I'm fine.

5 BY MR. SCHULTZ:

6 Q. Very good. So again, still on the IFR but  
7 a slightly different angle I'm going to be talking  
8 about here.

9 First let's go to paragraph 93, back a  
10 couple of ticks, please, and one of the numbers there  
11 on the second sentence, you say, "Between June and  
12 September of 2022, asylum" -- I'm sorry, I'm sorry.  
13 I asked for the first half of that.

14 Let me ask about the second half of that  
15 sentence there where you have the number about 572  
16 AMIs, right?

17 A. That's correct, Counsel.

18 Q. Where did you get that number from, please?

19 A. That's from the asylum cohort report that  
20 was issued by DHS.

21 Q. Okay. And is that a number that you lifted  
22 directly from it or did you perform calculations on  
23 that data to get that number?

24 A. I had to calculate the numbers.

25 Q. Okay. Do you walk through that calculation

1 here in paragraph 93?

2 A. Sure. So if you take 57 -- by the way,  
3 Counsel, I will tell you, math is sometimes a -- not  
4 my strong point, but if you take 110 referrals and  
5 you add 49 grants, you get to 159 and then if you  
6 deny the or divide the 49 by the 159, you get to the  
7 number.

8 Q. Okay.

9 MR. ST. JOHN: For the record --  
10 BY MR. SCHULTZ:

11 Q. There's some crosstalk there. Judge  
12 Arthur, if you could finish please and then Scott.

13 A. That was it.

14 MR. ST. JOHN: Judge, you made a couple of  
15 statements. We're on a transcript. It doesn't  
16 reflect intonation.

17 I assume you were joking about your math  
18 ability, that you have the ability to do basic  
19 arithmetic?

20 MR. SCHULTZ: Scott, are you testifying  
21 here?

22 MR. ST. JOHN: Counsel, you know, you made  
23 a big statement about not wanting to record it.  
24 I tell you what we're going to do. I'm going to  
25 start recording this. I think you noticed the

1 deposition as being recordable.

2 If we're going to -- if you're going to  
3 play games with the witness -- a witness making  
4 an obvious joke, I want to protect the record  
5 from that.

6 If you're going to play games, I'll turn on  
7 the recording and then we can play the recording  
8 when you try to do this in court.

9 MR. SCHULTZ: Scott, first of all, I'm not  
10 playing games. All I said is that you can't  
11 testify.

12 MR. ST. JOHN: I will protect my record. I  
13 will protect the record. I'm not testifying. I  
14 want a clean record for Mr. Arthur.

15 And Counsel, do you disagree that -- let's  
16 chat. Do you disagree that Mr. Arthur was  
17 joking based on his intonation?

18 MR. SCHULTZ: Counsel, this isn't the time  
19 or place for this sort of exchange. All I said  
20 is, please don't testify.

21 MR. ST. JOHN: Counsel, for the record, we  
22 are going to start recording this.

23 MR. SCHULTZ: Okay. I am going to object  
24 to the recording there please, Counsel.

25 MR. ST. JOHN: Did you notice the

1 deposition saying it could be video or audio  
2 recorded?

3 MR. SCHULTZ: That was by us, is I think  
4 the common way to read that, sir.

5 MR. ST. JOHN: Well, any party can do it,  
6 so we're going to do it, given your conduct just  
7 now and given your prior conduct.

8 MR. SCHULTZ: Well, there is no prior  
9 conduct to object about. This there is no  
10 current conduct by me to object about.

11 I simply asked you as counsel not to  
12 testify, please. That was my request, sir.

13 So let's do this. It is 3:08. And we're  
14 going to go off the record for a little bit.  
15 Let's say five minutes, please. Thank you.

16 We're off the record at 3:08.

17 (RECESS TAKEN.)

18 BY MR. SCHULTZ:

19 Q. It's 3:18. We're back on the record. Are  
20 you set?

21 A. Yes, I am.

22 Q. So just a couple quick notes. First of  
23 all, we just want to make a couple objections, first  
24 to the speaking objection and also -- I'm sorry, we  
25 are objecting to your speaking objection. And in

1 addition, I am objecting to any coaching or  
2 correction of testimony. And third, I'm objecting to  
3 any partial recording of the deposition that's been  
4 going on for hours already. Those are my objections.  
5 Going on to the next question.

6 MR. ST. JOHN: May I for the record, for  
7 the record, I think it's important that the  
8 court has made clear to the United States, to  
9 Ms. Ryan, who I understand is sitting in the  
10 room, not to play games.

11 The witness made an obvious joke. Although  
12 the United States noticed a recorded deposition,  
13 they chose not to record. And when I made a  
14 statement for the record that the witness had  
15 just made an obvious joke based on his  
16 intonation, I was chewed out by Mr. Schultz.

17 That reflects that Mr. Schultz intends to  
18 play games with the transcript. So we have been  
19 forced to record in order to prevent the United  
20 States from playing games.

21 It's unfortunate. This has been the second  
22 instance in this deposition where Mr. Schultz  
23 used sharp practices. The first time was an  
24 attempt to mislead the witness by make  
25 statements and offering alternatives that the

1 people sitting next to Mr. Schultz know are  
2 false.

3 The plaintiff and state will not tolerate  
4 such sharp practices. If we need to reach out  
5 to the court, we will. It's unfortunate that  
6 we've been put in this deposition position, but  
7 let's proceed with the deposition.

8 MR. SCHULTZ: Let's proceed with the  
9 deposition. I do disagree with some of the  
10 statements that you made, but let's go forward.

11 BY MR. SCHULTZ:

12 Q. So let's turn to paragraph 93, please,  
13 Judge, and that's where we were before, but it's a  
14 different part of it.

15 So at the end there, there's a sentence,  
16 very last sentence in paragraph 93, it says, "I  
17 concluded that AOs have granted asylum in nearly 31  
18 percent of the border cases that they heard to  
19 completion, i.e., almost twice as often as IJs  
20 historically had."

21 And then there's a footnote that leads to  
22 something that you wrote for CIS; is that accurate  
23 what I just said?

24 A. That's correct, Counsel.

25 Q. Okay. So when you write about the -- in

1       that last phrase, almost twice as often as IJs  
2       historically had, is it fair to say that you're  
3       talking about the rates that IJs, immigration judges,  
4       have historically granted asylum? Is that what  
5       you're referring to in that phrase?

6           A.     Yes, Counsel. It should be reflected in  
7       my -- in the blog post that is referenced.

8           Q.     You're talking about the rate. That's what  
9       I want to use as my starting point there. Right?

10          A.     Correct, Counsel.

11          Q.     Thank you. So when you say historically,  
12       what frame of years are you looking at there, please?

13          A.     I'd have to go back to the blog post itself  
14       to actually give you an exact answer.

15          Q.     But you don't know that right now?

16          A.     I don't know it off the top of my head.

17          Q.     Okay. Do you have any source for that  
18       statement aside from your own blog post?

19          A.     For the statement it would be based upon  
20       Department of Justice Executive Office For  
21       Immigration Review statistics that are available on  
22       their website.

23          Q.     But their website wouldn't say how long  
24       you're looking at when you say historically, would  
25       it?

1 A. It would not, Counsel.

2 Q. That's your phrasing, right, historically?

3 A. That's correct, Counsel.

4 Q. Okay. I'm just trying to figure out how  
5 you came to the conclusion of what that number might  
6 be. Okay.

7 So let's look at footnote 47 there on page  
8 25 if you can, please. Okay?

9 A. Yes, Counsel.

10 Q. And we have a copy of that here that I'm  
11 going to put in as Exhibit No. 4, please. And we are  
12 going to show that to you in just a moment. Thank  
13 you for your patience while we do that.

14 (EXHIBIT NO. 4 MARKED FOR IDENTIFICATION.)

15 BY MR. SCHULTZ:

16 Q. There we go. Can you see that on your  
17 screen, Judge Arthur?

18 A. Mine is blank, Counsel. There it is.

19 Q. Okay. Great.

20 MR. SCHULTZ: And Scott, can you see that  
21 as well?

22 MR. ST. JOHN: I can.

23 BY MR. SCHULTZ:

24 Q. Okay. Great. And that's a one-page  
25 document, if you scroll down to show that, please.



1 It's just the one page there, okay?

2 A. Correct. Counsel.

3 Q. Okay. So I'm going to ask a question, then  
4 I'm going to suggest where you might find the answer.  
5 That's just for your own help. You don't need to  
6 follow my suggestion.

7 Does the data indicate in that chart, does  
8 that show data for all initial asylum decisions by  
9 immigration judges? And if you look at footnote one,  
10 that might help with your answer, if you scroll down  
11 to footnote one.

12 A. I believe that that is all adjudication.

13 MR. ST. JOHN: Objection. The document  
14 speaks for itself.

15 BY MR. SCHULTZ:

16 Q. Okay. Now, I have a question before we go  
17 forward.

18 For Asylum Merits Interviews, under the  
19 Interim Final Rule, do those always take place after  
20 there's been a Credible Fear Interview?

21 A. They do, Counsel. It's a condition  
22 precedent.

23 Q. Okay. Thank you. But that document here  
24 that you cited in footnote 47, that isn't limited to  
25 cases in immigration court where there's been a

1 Credible Fear Interview, is there?

2 A. It does not, Counsel.

3 Q. Okay. So --

4 A. I apologize, there is another document that  
5 actually talks about adjudications after Credible  
6 Fear Interviews.

7 Q. And no need to apologize at all. I think  
8 we're both heading into the same direction.

9 So is it fair to say then that that --  
10 looking at this document here as an indication of  
11 what immigration judges do with asylum cases, is it  
12 fair to say it's not really an apples to apples  
13 comparison because this includes cases where there  
14 hasn't been a Credible Fear Interview?

15 A. Well, it does indicate that from 2022 to  
16 the third quarter of 2023, it's 14.79 percent, but  
17 it's not an apples to apples, but it is -- it does  
18 reflect immigration decisions or asylum decisions by  
19 the judges at large.

20 Q. Okay. Thank you.

21 So you mentioned there was another  
22 document, and we're going to pull up what I think you  
23 might be thinking of, but you can tell me. And we're  
24 going to call that Exhibit No. 5 and we're going to  
25 put that on in just a moment, please. So thank you

1 for your patience.

2 And Judge, no need to apologize at all, but  
3 what you're saying is always helpful. Thank you so  
4 much.

5 A. I can see the document.

6 (EXHIBIT NO. 5 MARKED FOR IDENTIFICATION.)

7 BY MR. SCHULTZ:

8 Q. Okay.

9 A. I apologize, that's the document that I'm  
10 referencing.

11 Q. Okay. Good. So this is Exhibit No. 5.  
12 This is a public document, by the way. It is a very  
13 long and cumbersome web page, which even reading into  
14 the record is cumbersome.

15 Do you know how to get this document, Judge  
16 Arthur?

17 A. I do, Counsel.

18 Q. Okay. So let's then look at this document.  
19 And just my eyesight is not as good as I wish it  
20 were. I'm standing up and getting closer.

21 At the top of the document, in light blue,  
22 does it say, "Asylum decision and filing rates in  
23 cases originating with a credible fear claim"? Do  
24 you see that in light blue?

25 A. It does, Counsel.

1 Q. Okay. Thank you. And is that a more  
2 limited set of data -- I'm sorry, is the chart  
3 reflected here, does that come from a more limited  
4 set of data than what we saw in the first chart a  
5 moment ago?

6 MR. ST. JOHN: Objection. The document  
7 speaks for itself.

8 THE WITNESS: It does, Counsel.

9 BY MR. SCHULTZ:

10 Q. Thank you, Judge. And is this the document  
11 that you said you had in mind?

12 A. That is the one, Counsel.

13 Q. Okay. Thank you. And would using this  
14 document give an apples to apples comparison to  
15 asylum officer decisions made in Asylum Merits  
16 Interviews under the -- under the Interim Final Rule?

17 A. It would, Counsel.

18 Q. Okay. Thank you. Why didn't you use this  
19 document or some version or some earlier version of  
20 this document in your expert report?

21 A. Because my knowledge of this is expanding  
22 with respect to the document in question that I cited  
23 directly to a blog post that I had written.

24 Q. When you say your knowledge of this is  
25 expanding, can you clarify what you mean by that,

1 please? I don't know that I followed.

2 A. I apologize. This is what I do for a  
3 living, Mr. Schultz. I'm constantly finding data  
4 points to explain immigration issues to the public,  
5 and to other individuals.

6 Q. I see. So is it fair to say you didn't  
7 know about this document -- you didn't know about  
8 this chart when you wrote your expert report?

9 A. It wasn't the one that I relied upon when I  
10 wrote the -- I can't remember whether I knew about it  
11 or not. EOIR's website is a little cumbersome, as  
12 you mentioned, with respect to the documents that are  
13 available.

14 Q. I'm not sure I mentioned that, but thank  
15 you.

16 A. I apologize, I thought you actually used  
17 the term cumbersome. But yeah, there were a number  
18 of documents on there and sometimes new documents are  
19 added. Sometimes they come off. I believe this  
20 document actually has been there.

21 Q. I think I understand now where you came  
22 from. I said that the web address was cumbersome,  
23 not that the navigation on the website was  
24 cumbersome. I just mean there's a lot of dashes and  
25 such on the web address on that chart. Thank you for

1 clarifying that. Thank you.

2 And you didn't use this anywhere in your  
3 report, did you, this second chart?

4 A. To the best of my knowledge, I did not.

5 Q. Okay. Thank you so much.

6 Let's move on a little bit to paragraph  
7 100. That's on page --

8 A. Sorry.

9 Q. I'm sorry, everyone okay? We can take down  
10 the chart now, yes. Judge, are you still there?

11 A. I'm still here.

12 Q. I thought I heard a noise.

13 A. Yeah, I dropped my binder.

14 Q. I see. Are you all set now?

15 A. I am. Yes. Go ahead.

16 Q. So paragraph 100, let me make sure I have  
17 the right words here for a moment.

18 In the first sentence you write, "The  
19 presence of asylum applicants in Louisiana and  
20 Florida is implicitly confirmed by pronouncements  
21 regarding the asylum IFR itself."

22 Did I read that right?

23 A. You did Counsel.

24 Q. Okay. What do you mean by implicitly  
25 confirmed?

1           A.     Because they talk about the fact that, in  
2           this instance Miami would be an office, as would  
3           later on New Orleans. And the way that the IFR  
4           assigns the cases, at least initially, is to places  
5           near where AMIs are being performed.

6           Q.     Is there any distinction between implicitly  
7           confirmed versus just confirmed?

8           A.     I guess, honestly, in that particular  
9           instance, no. Tacitly confirmed probably would have  
10          been a more artful way of saying it.

11          Q.     Now, you mentioned that that was because of  
12          the information, I guess, that's later in that same  
13          paragraph, that would include New Orleans and Miami,  
14          right?

15          A.     That is correct, Counsel.

16          Q.     Has that begun yet in New Orleans yet, to  
17          your knowledge?

18          A.     There have been six interviews that I'm  
19          aware of.

20          Q.     Six interviews in New Orleans?

21          A.     Six that eventually -- four were denials  
22          and two were administratively closed.

23          Q.     And those are Asylum Merits Interviews  
24          under the Interim Final Rule; is that correct?

25          A.     That is correct, Counsel.

1 Q. To your knowledge, have there been any  
2 Asylum Merits Interviews under the Interim Final Rule  
3 in Miami so far?

4 A. I would need to take a look at the Interim  
5 Final Rule, to the asylum cohort with respect to  
6 Miami, but to the best of my knowledge there are.

7 Q. There are?

8 A. There have been, yes.

9 Q. There have been. Okay. But do you have  
10 some sense of how many? And if you don't, that's  
11 fine.

12 MR. ST. JOHN: Objection. Best evidence  
13 rule.

14 THE WITNESS: I don't.

15 BY MR. SCHULTZ:

16 Q. Okay. I was asking what he knew, not what  
17 was in the document. Thank you so much, Judge.

18 If you go to the end of that paragraph now,  
19 please, so instead of the first sentence, the last  
20 sentence, it reads, quote, "In a June 2023 cohort,  
21 report indicates the asylum IFR has been applied to  
22 cases in Miami and New Orleans."

23 Do you see that?

24 A. I do, Counsel.

25 Q. Did I read that accurately?



1 A. You did, Counsel.

2 Q. Similar question: What do you mean by  
3 apply to cases, be applied to cases? Can you expand  
4 on that, please?

5 A. Yeah. They have performed IFR interviews  
6 in those places.

7 Q. You just mean that the rule has gone into  
8 effect there?

9 A. Correct, Counsel.

10 Q. Okay. Now, does that report that you  
11 talked about talk about any expenditures of money by  
12 the state of Louisiana?

13 A. It does not, Counsel.

14 Q. And what about for Florida?

15 A. It does not. It is simply a document that  
16 reflects how many interviews have been completed, how  
17 many were referred, how many were closed, and how  
18 many were denied or how many were granted, how many  
19 were referred and how many were administratively  
20 closed.

21 Q. All right. Let's go on a little bit to a  
22 couple of paragraphs down, to paragraph 105. You  
23 wrote, "I am informed that Louisiana's obligated by  
24 its state constitution to fund education." Then it  
25 goes on.

1 Do you see that phrase where it says, "I am  
2 informed"?

3 A. That is correct, Counsel.

4 Q. So let me take a couple of steps back. I  
5 just wanted to give you that to orient you to where  
6 my questions are going to be heading right now. I  
7 just realized one thing I need to check here.

8 Okay. You were a 30(b)(6) witness in this  
9 case. We talked about that earlier, right?

10 A. That's correct, Counsel.

11 Q. So let me just ask you generally first and  
12 then we can kind of go from there. In what context  
13 were you informed about Louisiana, as you wrote in  
14 paragraph 105?

15 A. I was informed by the attorney general's  
16 office at that time.

17 Q. And when you say "at that time," what do  
18 you mean, please?

19 A. I've subsequently spoken to the Department  
20 of Education in Louisiana.

21 Q. Okay. I still don't understand what you  
22 meant when you said "at that time." Was there a  
23 specific time frame that you were referring to?

24 A. Yes, at the time that I issued this report.

25 Q. I see. Okay.

1 I need to pause for a second here, please.

2 Thank you.

3 Let's go to the last sentence there. It  
4 says, "I am further informed that additional state  
5 funding is allocated based on certain student  
6 characteristics, one of which is the English Language  
7 Learner."

8 Do you see that?

9 A. I do, Counsel.

10 Q. Was that information that you were given or  
11 a conclusion that you were given?

12 A. That was information that I was provided.

13 Q. Okay. And what information exactly were  
14 you provided?

15 A. That the funding per student is \$4,015,  
16 under the FMAP, and then there are variations in  
17 that.

18 Q. Okay. And what was the source of that  
19 information, please? You had mentioned both  
20 information and the state attorney general's office.  
21 Can you tell me which was the source, please?

22 A. The state attorney general's office.

23 Q. Okay. Thank you. And for paragraph 106,  
24 there's a similar phrasing about Florida. It says,  
25 "I am informed that Florida is similarly obligated,"

1 and then it goes on with what you wrote in 106.

2 When you said -- when you wrote "I am  
3 informed," who informed you, please?

4 A. The attorney general's office of the state  
5 of Louisiana.

6 Q. And --

7 A. And I've since confirmed both of those  
8 facts with the Department of Education.

9 Q. Of Louisiana?

10 A. Of Louisiana.

11 Q. So you confirmed with the Department of  
12 Education of Louisiana what the Florida constitution  
13 does?

14 MR. ST. JOHN: Objection. Vague.

15 BY MR. SCHULTZ:

16 Q. You can answer, please.

17 A. With respect to the -- with the Florida  
18 constitution, that one, I have been informed by the  
19 attorney general's office of Louisiana.

20 Q. Again, I'm just trying to get at, so for  
21 all of this it wasn't Florida that gave it to you, it  
22 was Louisiana that gave it to you, right?

23 A. Yes, it was, Counsel.

24 Q. Okay. And there's various other places in  
25 your report where you have that phrasing, "I am

1 informed." For all of those, was it from the  
2 attorney general of Louisiana?

3 A. It was, Counsel.

4 Q. Thank you. If you look at paragraph -- I'm  
5 sorry, if you look at footnotes 58 to 63, those are  
6 the ones at the bottom of page 28. There's just a  
7 list of them there running from 58 to 63.

8 Do you see those?

9 A. Correct, Counsel.

10 Q. Okay. Do those sources mention the number  
11 of people whose presence in Louisiana can be  
12 attributed to the IFR?

13 A. They do not. That information is not  
14 available to the state of Louisiana or to me, because  
15 under 8 CFR 208.6, information that's contained  
16 inside Credible Fear Interviews and Asylum Interviews  
17 is not for public disclosure, and that includes  
18 through the state.

19 Q. Do you know if Louisiana has the ability to  
20 track who is or isn't a parolee in those numbers?

21 A. With respect to education?

22 Q. Correct.

23 A. Under Plyler versus Doe, which is a Supreme  
24 Court case, the state is required to provide  
25 education to every resident of the state who request

1 it. And DOJ -- the civil division of DOJ and the  
2 Department of Education have sent letters to state  
3 officials warning them not to inquire into the  
4 immigration status of individuals, whether they have  
5 legal status or whether they don't.

6 Q. And is it your understanding that Louisiana  
7 follows that -- follows the -- follows what was  
8 offered in that letter?

9 A. Yes, they do.

10 Q. Thank you. Let's turn to paragraph 110,  
11 please, the next one up -- the next page up, I should  
12 say, on page 29.

13 And it starts off in the first sentence  
14 talking about a natural experiment involving  
15 enrollment of defined group -- I'm sorry, enrollment  
16 of a defined group of migrant children, also provides  
17 some insight. And the next two words say that it  
18 took place in 2014.

19 Do you see that?

20 A. Do I -- I see where it says 2014 to begin  
21 with.

22 Q. Okay. So if you look at paragraph 110, on  
23 the second line down there, which is line four of the  
24 page, the second sentence there begins in 2014.

25 A. Correct, Counsel. I thought you said that

1 2014 had been referenced twice.

2 Q. If I did, I apologize. But thank you.

3 I was trying to pull it onto your awareness  
4 that this is a time frame in 2014 that you're talking  
5 about in paragraph 110; is that accurate?

6 A. That is accurate, that was a rather  
7 well-publicized request that Senator Vitter had made.

8 Q. Okay. And I just was hoping you could  
9 please explain to me why you're talking about a 2014  
10 phenomena when the IFR didn't come into existence for  
11 years after that?

12 A. It establishes the fact that unaccompanied  
13 alien children have imposed cost on the state of  
14 Louisiana with respect to their enrollment in school,  
15 indicative of the fact that students without status  
16 have in fact enrolled in Louisiana schools.

17 Q. Okay. But this all took place years before  
18 the IFR was even proposed, right?

19 A. Correct, Counsel.

20 Q. Okay. And going to the next paragraph, it  
21 starts off with the words "There can be little doubt  
22 that alien children impose education cost on Florida  
23 and Louisiana even if those costs are difficult to  
24 quantify precisely."

25 Do you see where those words are?

1 A. I do, Counsel.

2 Q. And did I read those correctly?

3 A. You did, Counsel.

4 Q. Okay. Thanks.

5 So a couple of questions about that. First  
6 of all, I'm sorry, following that -- immediately  
7 following that sentence there is no footnote, is  
8 there?

9 A. The remainder of that paragraph explains  
10 that.

11 Q. Okay. But Mr. Arthur, there is no footnote  
12 immediately following that sentence, right?

13 MR. ST. JOHN: Objection. Asked and  
14 answered.

15 THE WITNESS: There is no footnote,  
16 Counsel.

17 BY MR. SCHULTZ:

18 Q. I'm sorry, I think that the connection just  
19 stuttered there for a moment. If you could just  
20 repeat what you said. I couldn't hear.

21 A. There is no footnote accompanying it.

22 Q. Okay. Thank you.

23 A. The rest of the paragraph explains it.

24 Q. Okay. Thank you. And there's one footnote  
25 in that paragraph and it's one of your -- it's to a



1 CIS report, right, number 66?

2 A. That is correct, Counsel.

3 Q. Okay. Now, you say at the end of that  
4 paragraph, "As former acting Secretary of Homeland  
5 Security, Chad Wolf, testified earlier this year."

6 Chad Wolf wasn't acting Secretary of  
7 Homeland Security in 2023, was he?

8 A. It is modified by the word "former."

9 Q. Oh, I see. He testified as the former,  
10 not -- okay. Thank you for clarifying.

11 And where was -- where or when did that  
12 testimony take place? I don't see a footnote for  
13 that either.

14 A. I've got to think about that. At the  
15 moment, I can't remember when that testimony took  
16 place.

17 Q. Okay. When you write at the top of that  
18 paragraph "There can be little doubt," does that mean  
19 that there can be some doubt?

20 A. The language is probably imprecise. There  
21 can be no doubt.

22 Q. That's not what you wrote here, is it?

23 A. No, it's not, Counsel.

24 Q. Okay. And the second part of that opening  
25 sentence, you say that "Those costs are difficult to

1 quantify precisely."

2 Do you see that?

3 A. I do, Counsel.

4 Q. Okay. How could there be little doubt when  
5 it's so hard to quantify?

6 A. Because of the structure of the law,  
7 because of the presence of aliens and alien children  
8 in the state of Louisiana, and because of the fact it  
9 can't be quantified because under Plyler versus Doe  
10 and the DOJ civil division -- actually, I think it  
11 was civil rights division and DOE, Department of  
12 Education letter, they're not allowed to ask about  
13 the immigration status of the students of their  
14 schools.

15 Q. Thank you. And I do understand that you're  
16 saying it's difficult to quantify. What I'm getting  
17 at, which I'm not sure you quite addressed, was given  
18 that it's so difficult to quantify, how can you have  
19 little to no doubt?

20 A. Because there are immigrant students who  
21 are present in Louisiana, based upon it's cumulative  
22 of Senator Vitters' request, because of Plyler versus  
23 Doe, because they can't ask about the immigration  
24 status of the children in the schools.

25 Q. Okay. Let's go forward a little bit.

1 Let's make sure. Paragraphs 117 through 128, if you  
2 can just look at those, please, and let me know once  
3 you've familiarized yourself with them.

4 A. Yes, Counsel.

5 Q. Okay. I didn't see any mention of the IFL  
6 in those paragraphs. Did I miss that?

7 A. It is not in there, Counsel.

8 Q. Okay. Why not?

9 A. The theory of my report, the basis of my  
10 report is that by increasing the number of aliens who  
11 will be released in the United States, it will  
12 increase the -- and by expediting the process by  
13 which those individuals would be granted asylum, that  
14 it would impose additional costs on the state of  
15 Louisiana.

16 Q. And moving forward a little bit to  
17 paragraph 129, let's skip that. Let's skip that.

18 A. That's the paragraph that actually  
19 summarizes the point I just made.

20 Q. Okay. Very good. Thank you.

21 So at the end of your report, or so your  
22 report -- I think this is what you have in front of  
23 you -- ends at page 37; is that right?

24 A. That is correct, Counsel.

25 Q. And it has a signature line that says

1 Andrew Arthur and what looks like a signature.

2 That's your signature, right?

3 A. It is, correct, Counsel.

4 Q. And then that's where your current copy in  
5 front of you ends; is that right?

6 A. That is the one that I signed. That is the  
7 current one that I signed based upon my knowledge at  
8 the time that I signed everything.

9 Q. Okay. And that's where yours ends too,  
10 right, at page 37, I think?

11 A. It is.

12 Q. You said the core report, right?

13 MR. ST. JOHN: The report is the report. I  
14 mean, you know, he -- I mean, the total report  
15 is I wanted to say 100-something pages.

16 MR. SCHULTZ: I thought that was your  
17 phrase from before. I thought I heard you say  
18 core report before.

19 MR. ST. JOHN: Thankfully I'm not the  
20 witness.

21 MR. SCHULTZ: Really all I'm getting at is  
22 yours ends at page 37, right?

23 MR. ST. JOHN: That's where the document I  
24 have in front of me ends.

25 MR. SCHULTZ: That's all I'm asking.

1 BY MR. SCHULTZ:

2 Q. So the document that I have in front of me  
3 goes on. It has Exhibit A, which we talked about  
4 before, which we showed you. That was the -- what  
5 you called your CV.

6 Do you remember talking about that?

7 A. I do, Counsel.

8 Q. There's also an Exhibit B that I have here.  
9 Do you remember that there was an Exhibit B?

10 A. I believe the Exhibit B is my comment in  
11 response to the JNPRN.

12 Q. Okay. So do you have a copy of that in  
13 front of you?

14 A. I do not.

15 Q. Okay. So I have it dated October 28, 2021.  
16 Does that sound right?

17 A. That does sound correct, Counsel.

18 Q. Was that written before you signed your  
19 contract with the state of Louisiana to be an expert  
20 in this case?

21 A. That was in response to the JNPRN. Yes, it  
22 should have been.

23 Q. It should have been?

24 A. It should have been because the JNPRN  
25 predated the IFR and the IFR is what I was hired to

1 offer expert testimony on.

2 Q. Okay. And I'm not sure that I followed the  
3 answer there, and I apologize if I wasn't clear.

4 A. JNPRM is Joint Notice of Proposed  
5 Rulemaking.

6 Q. I appreciate that. Thank you. My question  
7 is just about the dates. My question is, did you  
8 sign your contract with Louisiana before or after  
9 October 18, 2021?

10 A. It would have been after.

11 Q. Okay. Thank you. Thank you.

12 And were you paid to write this Exhibit B  
13 by anyone?

14 A. It is part of my responsibilities at the  
15 Center For Immigration Studies.

16 Q. Okay. Did the state of Louisiana pay you  
17 to write that letter?

18 A. They did not.

19 Q. Did the state of Florida pay you to write  
20 it?

21 A. They did not, Counsel.

22 Q. Did any plaintiff in the case pay you to  
23 write it?

24 A. No.

25 Q. Do you know who Robert Law is?

1           A.     Robert Law is a former colleague of mine at  
2     the Center For Immigration Studies.

3           Q.     Did Robert Law help you write the letter  
4     dated October 18, 2021?

5           A.     He did not.

6                     I'm sorry, what was the date on that one?

7           Q.     October 18, 2021.

8           A.     Yes.

9           Q.     So just for a clear record, I'll ask the  
10    question again.

11                    Did Robert Law help you write the letter  
12    dated October 18, 2021?

13          A.     Yes, he did, Counsel.

14          Q.     Okay.

15          A.     By the way, it's not a letter.   It's a  
16    comment.   It's in the form of a letter, but under  
17    filing it's technically a comment.

18          Q.     Thank you.   It's framed as a letter, so  
19    that's why I was referring to it that way, but I'm  
20    happy to call it a comment.   That's just fine.   Thank  
21    you for clarifying.

22                    And do you know who Julie Axelrod is?

23          A.     I do.

24          Q.     Did Julie Axelrod write this comment with  
25    you as well?

1 A. She did.

2 Q. Is Robert Law an expert who's been hired by  
3 the plaintiffs in this case?

4 A. He is not.

5 Q. Okay. And is Julie Axelrod an expert who's  
6 been hired by the plaintiffs in this case?

7 A. It is not.

8 Q. Do you mean she is not?

9 A. I apologize. She is not. Sorry.

10 Q. Thank you so much.

11 How did you come to write this letter, the  
12 October 18th comments, I should say?

13 A. Well, the comment was written in response  
14 to the interim, the Joint Notice of Proposed  
15 Rulemaking. Part of the Center's job -- part of what  
16 we do, part of the reason that we exist is to inform  
17 the public with respect to immigration issues.  
18 Consistent with that is informing -- is responding to  
19 proposed rulemaking.

20 Q. Okay. Thank you. Was it your idea to  
21 write the letter or do you remember exactly how the  
22 mechanics worked out on who thought to do it first?

23 A. Honestly, I don't remember. It was the --  
24 I can remember the mechanics of it very well. Rob  
25 Law produced more or less the structure of it. Julie



1 Axelrod produced a portion at the end, but the vast  
2 majority of work in that comment are mine.

3 Q. Okay.

4 A. We generally respond to notices of proposed  
5 rulemaking that are submitted or that are issued by  
6 the administration, both this administration and the  
7 prior one.

8 Q. Okay. Thank you. I'm going to take a  
9 moment here and go on mute. Thank you.

10 A. Thanks, Counsel.

11 (OFF THE RECORD.)

12 MR. SCHULTZ: It's 4:02, so we're back on  
13 the record now. So those are the questions that  
14 I have. Scott, if you are planning to ask  
15 questions, then of course that's fine. But  
16 let's take five minutes before we do that, if  
17 that's what you want to do.

18 MR. ST. JOHN: Okay. Off the record.

19 MR. SCHULTZ: You're going to do the  
20 questions then, yes?

21 MR. ST. JOHN: Yes. It is 4:02. Back in  
22 five minutes. Thank you all.

23 (RECESS TAKEN.)

24 EXAMINATION

25 BY MR. ST. JOHN:

1 Q. Welcome back, Judge Arthur.

2 A. Thank you, sir.

3 Q. Mr. Schultz at times talked about push and  
4 pull factors, analysis, modeling. Do you know if  
5 there is a group within the Department of Homeland  
6 Security that does any type of analysis or modeling  
7 of migrant flows?

8 A. There is -- identifying the migrant flow in  
9 advance is critical to the mission of CBP and border  
10 patrol in particular. And in fact, in the  
11 Circumvention of Lawful Pathways Rule, the interim  
12 version that was issued in February, they  
13 specifically referenced the fact that they do track  
14 that information or that there is an organization  
15 within the department that tracks that information.

16 Q. To your knowledge, is the concept of push  
17 and pull factors generally accepted among immigration  
18 experts?

19 A. It is, Counsel.

20 Q. To your knowledge, does the Department of  
21 Homeland Security rely on push and pull factors in  
22 making the analysis you just testified about?

23 A. There is -- again, there is a robust --  
24 there is a robust team within DHS that performs those  
25 analyses, but I didn't see reference to any of those

1 analyses in this particular IFR.

2 Q. And presumably, the results of that team  
3 are sufficiently reliable that the United States  
4 Government relies upon them, correct?

5 A. They are.

6 MR. SCHULTZ: Objection.

7 THE WITNESS: They are sufficiently  
8 reliable. This is an effort that's been going  
9 on for years. Familiar with it when I was at  
10 the INS and also familiar with it when I was on  
11 the hill.

12 BY MR. ST. JOHN:

13 Q. So you talked about statistics a little  
14 bit. Presumably, they collect -- well, not  
15 presumably, you know, there's actually a statutory  
16 requirement that the federal government collects  
17 certain statistics about the border, correct?

18 A. That is correct. I can't cite to the  
19 specific statute, but they do collect it. And in  
20 fact, it goes into modeling that was required or it  
21 goes into analyses that were required under the NDA,  
22 National Defense Authorization Act of 2017, which I  
23 think is now at 6 U.S. Code 223. And they produce an  
24 annual report that's provided under the government  
25 accountability office.

1 Q. And forgive me if I'm wrong, my  
2 recollection is that the statistics include border  
3 encounters, correct?

4 A. That is correct, Counsel.

5 Q. Gotaways, which is a statutorily defined  
6 term, correct?

7 A. It's statutorily defined in 6 USC 223.

8 Q. And estimates of what I would call unknown  
9 gotaways?

10 A. There is generally a factor that is  
11 commonly accepted. In fact, in testimony before, I  
12 believe it was the house oversight committee in  
13 March, then-chief -- Border Patrol Chief Ortiz  
14 actually talked about a 10 percent or 20 percent --  
15 10 percent to 20 percent assumption that there are  
16 unknown gotaways.

17 Q. And so to really model or understand the  
18 border flow, you have -- migrant flow across the  
19 United States border, you would have to look at all  
20 of those, correct?

21 MR. SCHULTZ: Objection.

22 THE WITNESS: To model those, yes. In  
23 fact, they're kept in realtime and accessible to  
24 the department in realtime on a daily basis.

25 When I say in realtime, I mean on a daily

1 basis.

2 BY MR. ST. JOHN:

3 Q. Are you familiar -- there was -- well,  
4 strike that.

5 At some point either you testified or  
6 Mr. Schultz asked about TRAC, T-R-A-C. What is TRAC?

7 A. It's the Transactional Records Access  
8 Center in Syracuse University.

9 Q. Where does TRAC get its data?

10 A. From FOIA, Freedom of Information Act,  
11 requests that they make of the federal government.

12 Q. So TRAC's data is purely derivative of data  
13 that the federal government has in its possession?

14 A. It is. That's where the FOIA disclosures  
15 come from.

16 Q. Do you know if TRAC data is generally  
17 accurate or not?

18 A. Could you define "generally accurate"?

19 Q. Well, are you aware of any significant  
20 errors in TRAC data?

21 A. With respect to they keep track of -- track  
22 with a K in this instance -- of asylum or immigration  
23 judge asylum grant rates. And I believe that they do  
24 actually underestimate -- they did actually  
25 underestimate the number of asylum cases that I

1 handled. That's the -- that is one that is specific  
2 to me.

3 Q. What did TRAC show as far as the number of  
4 immigration cases you handled, Judge?

5 A. It's been a while since I looked at that  
6 data. It's been a long time since I looked at that  
7 data, but I thought that the TRAC data showed that I  
8 had performed a couple hundred asylum cases, wherein  
9 I know just from my recollection that it was much  
10 higher than that number.

11 Q. Much higher? A thousand? Two thousand?

12 MR. SCHULTZ: Objection.

13 THE WITNESS: I didn't keep track of the  
14 number of asylum cases that I did, but I would  
15 generally do a number of asylum cases every week  
16 and I served as an immigration judge for eight  
17 years and a couple of months.

18 BY MR. ST. JOHN:

19 Q. Do you have an estimate, even a ballpark, a  
20 range of how many immigration cases you think you  
21 did?

22 A. Yeah, I didn't keep a running tally of the  
23 number of asylum cases -- immigration or asylum  
24 cases.

25 With respect to asylum cases, I didn't keep

1 a running tally, but it was probably upwards of --  
2 again, it's going to be a really rough ballpark. It  
3 was probably upwards of -- I want to say maybe five  
4 hundred to a couple thousand.

5 And again, I apologize, when you adjudicate  
6 those cases, as Mr. Schultz will tell you, you do  
7 them in real time and you move on to the next one.

8 Q. If I wanted the real data, I would need to  
9 look to the federal government, not to TRAC, though,  
10 correct?

11 MR. SCHULTZ: Objection.

12 THE WITNESS: That is correct. The federal  
13 government actually maintains a list of all of  
14 the cases that I handled. There were codes. 05  
15 is the code for asylum, and you could obtain  
16 that information with respect to me.

17 BY MR. ST. JOHN:

18 Q. And that's true more generally -- is that  
19 true more generally of data TRAC maintained; you  
20 would look to the federal government for the  
21 definitive answer?

22 MR. SCHULTZ: Objection.

23 THE WITNESS: Yes. The federal government  
24 keeps very accurate records on that data.  
25 Again, we talked before about the chart that

1 Mr. Schultz had referenced. That is accurate  
2 data because they do capture that 05.

3 In fact, I came across that chart in  
4 response to some inquiries I had from  
5 congressional staffers.

6 BY MR. ST. JOHN:

7 Q. I'm going to shift gears. A few times  
8 today Mr. Schultz said you were an expert in  
9 immigration law.

10 Do you recall that?

11 MR. SCHULTZ: Objection.

12 THE WITNESS: Yes, I do.

13 BY MR. ST. JOHN:

14 Q. You're an immigration judge. I assume it's  
15 fair that you are in fact an expert in immigration  
16 law?

17 MR. SCHULTZ: Objection.

18 BY MR. ST. JOHN:

19 Q. Is that fair?

20 A. Not simply because I was an immigration  
21 judge, but also because of my experience as a trial  
22 attorney as oversight counsel for immigration, and  
23 because of my role as staff director at the house  
24 committee on oversight and government reform,  
25 national security subcommittee in which role I had



1 jurisdiction over immigration for a chairman and a  
2 subcommittee chairman that were very interested in  
3 immigration.

4 Q. But in this case, you're not just an expert  
5 on immigration law, I'd refer you to paragraph 13 of  
6 your expert report.

7 MR. SCHULTZ: Objection.

8 BY MR. ST. JOHN:

9 Q. If you can read the first sentence of  
10 paragraph 13.

11 A. "I am a recognized expert in the field of  
12 immigration, generally." Yes.

13 Q. In immigration policies, specifically?

14 MR. SCHULTZ: Objection.

15 BY MR. ST. JOHN:

16 Q. You can answer, Judge Arthur.

17 A. Yes. With respect to immigration national  
18 security and specifically immigration policy.

19 Q. And within that, you have experience, I  
20 believe you testified earlier today, with respect to  
21 the impact of policies?

22 MR. SCHULTZ: Objection.

23 BY MR. ST. JOHN:

24 Q. Is that correct?

25 A. That is correct. Both because of my work

1 at the Center For Immigration Studies and because of  
2 my role as oversight counsel for immigration on the  
3 House Judiciary Committee.

4 One of the big things that we looked at was  
5 impacts upon societies, particularly with respect to  
6 public benefits with respect to the wages and working  
7 conditions of Americans.

8 And just to clarify, by American, that term  
9 is defined as United States citizens and lawfully --  
10 lawful immigrants who are eligible to work.

11 Q. And to make the analysis that you're  
12 talking about, looking at the impact of policy, you  
13 don't need to be -- necessarily be an expert in every  
14 program that an immigration policy would impact; is  
15 that correct?

16 MR. SCHULTZ: Objection.

17 THE WITNESS: That is correct, because one  
18 of things that immigration experts -- one of the  
19 things that I do, I don't want to speak for  
20 immigration experts generally -- is to look at  
21 the monetary cost of immigration in the United  
22 States, particularly with respect to localities.

23 This has become a key issue in response to  
24 complaints that have been raised by Mayor Eric  
25 Adams of New York City and other public

1 officials about the cost that they are bearing  
2 with respect to the -- with respect to migrants  
3 who have resettled in their areas. And my work  
4 in that has been cited by Congress, by  
5 congressional committees.

6 BY MR. ST. JOHN:

7 Q. There has been an awful lot of talk about  
8 footnotes today, Judge Arthur.

9 A. I apologize.

10 Q. Judge Arthur, has there been a lot of  
11 discussion about footnotes today?

12 A. I thought that was a prefatory statement.  
13 There has been, Counsel.

14 Q. If I told you there were 50 states in the  
15 union, would you need a footnote to accept that  
16 statement as true?

17 A. No, I would not.

18 MR. SCHULTZ: Objection.

19 THE WITNESS: I apologize, Counsel. I can  
20 answer the question?

21 BY MR. ST. JOHN:

22 Q. Yes, you may answer.

23 A. It is well-known and generally accepted  
24 that there are 50 states in the union.

25 Q. If I told you Pearl Harbor was bombed by

1 the Japanese on December 7, 1941, would you need a  
2 footnote and a source to believe that?

3 MR. SCHULTZ: Objection.

4 THE WITNESS: No, I would not need a  
5 footnote or a source to make that statement.

6 BY MR. ST. JOHN:

7 Q. Let's go to something a little softer. Are  
8 you familiar with a publication called Penthouse,  
9 Penthouse magazine?

10 A. I am familiar that it exists.

11 Q. If I told you that Penthouse was a  
12 pornographic magazine, would you need me to supply a  
13 footnote and a citation for the fact that Penthouse  
14 is a pornographic magazine?

15 MR. SCHULTZ: Objection.

16 THE WITNESS: I would not need such a  
17 footnote. It's generally accepted that that's  
18 true.

19 BY MR. ST. JOHN:

20 Q. To your knowledge, did a justice named  
21 Potter Stewart say something about that?

22 MR. SCHULTZ: Objection.

23 THE WITNESS: I apologize. I believe that  
24 Potter Stewart's quote may have preexisted the  
25 creation of Penthouse magazine, but Potter

1           Stewart did make a rather famous statement, "I  
2           know pornography when I see it."

3           BY MR. ST. JOHN:

4           Q.     It's something that's obvious and you don't  
5           need a citation, correct?

6           A.     That's correct.

7           MR. SCHULTZ:  Objection.

8           THE WITNESS:  I apologize.

9           Sorry, Counsel.  Correct.

10          BY MR. ST. JOHN:

11          Q.     When you're having a conversation, you  
12          don't source every sentence, do you?

13          MR. SCHULTZ:  Objection.

14          THE WITNESS:  I do not.

15          BY MR. ST. JOHN:

16          Q.     I remember a while back you and I were  
17          chatting about the economics of World War II, and I  
18          remember you were talking about a book by -- I think  
19          it was by John Kenneth Galbraith.

20          Do you remember that conversation?

21          A.     I do, Counsel.  It was actually an analysis  
22          by John Kenneth Galbraith of the effects of bombing  
23          on German industry during World War II.

24          Q.     That's Right.  I recall.

25          We talked for several minutes about that,

1 correct?

2 MR. SCHULTZ: Objection.

3 THE WITNESS: Sorry. We actually did. I  
4 can be a bit pedantic sometimes.

5 BY MR. ST. JOHN:

6 Q. And did you preface every sentence with  
7 "John Kenneth Galbraith said"?

8 MR. SCHULTZ: Objection.

9 THE WITNESS: I did not, Counsel.

10 BY MR. ST. JOHN:

11 Q. Because you and I both understood from the  
12 conversation exactly what you were talking about,  
13 correct?

14 MR. SCHULTZ: Objection.

15 THE WITNESS: That's correct, Counsel.

16 BY MR. ST. JOHN:

17 Q. At one point today, my recollection is that  
18 you testified that an alien's ability to remain in  
19 the United States may be a pull factor.

20 Let me ask you, do you agree with that  
21 statement?

22 A. I do, without a doubt. By remain, to  
23 clarify if I wasn't clear, to remain undetained in  
24 this country, yes.

25 Q. That was the question I was going to ask.

1 Thank you, Judge.

2 Mr. Schultz asked you about paragraph 78 of  
3 your expert report, and it dealt with the 21-day  
4 resolution requirement or the 21-day calendar  
5 requirement under the asylum IFR.

6 Do you recall that line of questioning?

7 A. I do recall that, Counsel.

8 Q. Does that 21-day period in the asylum IFR  
9 interact with the Flores settlement agreement?

10 MR. SCHULTZ: Objection.

11 THE WITNESS: Yes. Actually, the IFR is  
12 applicable to family units as well as to single  
13 adults.

14 And just to re-clarify the record, under  
15 the district court order in August of 2015, in  
16 Flores versus Lynch, Judge Dolly Gee -- Madam  
17 Transcriber, that's D-o-l-l-y G-e-e -- mandated  
18 the release of adult migrants and children who  
19 entered in family units within 20 days.

20 That was clarified by the -- or that was on  
21 appeal by DOJ. The circuit court, the 9th  
22 circuit stated that the adults in those family  
23 units could be detained. The children would be  
24 released. But generally, in order to avoid  
25 family separation, everyone is released.

1           And in fact, there was a recent decision  
2           that was issued. It was the agreement of the  
3           immigration judge -- I'm sorry, Judge Dana  
4           Sabraw, S-a-b-r-a-w, extended that with respect  
5           to the detention of criminal aliens.

6           It was an agreement that said criminal  
7           aliens or aliens subject to criminal -- by  
8           criminal aliens, I mean aliens subject to  
9           criminal penalties from proper entry and proper  
10          reentry could not enter or could not be  
11          detained, with exceptions.

12          And the 21-day rule would actually push all  
13          FMUs then outside of the window for that AMI,  
14          Asylum Merits Interview.

15       BY MR. ST. JOHN:

16           Q.    Let me try to narrow that down. Does that  
17           mean that a family -- an FMU could not be detained  
18           until their AMI?

19           A.    That's correct.

20           Q.    Mr. Schultz in discussing paragraph 89 of  
21           your expert report, he asked you a good number of  
22           questions about the standard for credible fear, and  
23           that it's different within the standard for asylum.

24                  Do you recall that line of questioning?

25           A.    That is correct.



1 Q. How close are the two standards?

2 A. For credible fear and asylum?

3 Q. Yes.

4 MR. SCHULTZ: Objection.

5 THE WITNESS: Counsel, I can't see you, so  
6 I apologize.

7 Can I answer the question? I actually  
8 didn't hear what Mr. Schultz said.

9 MR. ST. JOHN: He objected.

10 Madam Court Reporter, can you read back the  
11 question?

12 (Court reporter read back the question:  
13 "How close are the two standards?")

14 THE WITNESS: So the asylum standard is a  
15 well-founded fear of persecution on account of  
16 the five factors I listed before. Persecution  
17 or well-founded fear of persecution, based upon  
18 race, religion, nationality, membership in a  
19 particular social group and political opinion.

20 The credible fear standard is a substantial  
21 likelihood -- it's been a long day. I  
22 apologize -- that an alien could make such a  
23 showing.

24 BY MR. ST. JOHN:

25 Q. How close are those two standards in

1 practice?

2 A. In practice, they are pretty close. The  
3 asylum standard is not terribly high. The  
4 substantial likelihood is akin to -- tracks it, it  
5 plainly narrows it, but it doesn't narrow it  
6 significantly with respect to -- it's not simply that  
7 they make a claim, it's that there's a substantial  
8 likelihood that they'll be granted asylum.

9 Q. Judge, have you ever thrown a baseball with  
10 your son?

11 A. I've thrown a baseball, a football, and a  
12 lacrosse ball with my son.

13 Q. The mechanics of it, you know how to throw  
14 a baseball and you expect that when you throw the  
15 baseball, you know about where it's going to go,  
16 right?

17 MR. SCHULTZ: Objection.

18 THE WITNESS: That is correct.

19 I apologize, Counsel. That is correct.

20 BY MR. ST. JOHN:

21 Q. Because you've done it hundreds of  
22 thousands of times and it's predictable?

23 A. That is correct, Counsel.

24 Q. But one of the core ideas of science is  
25 that we observe something, we observe it, we observe

1 it, see the same thing again and again and again. We  
2 expect that same result to follow predictably.

3 Does that agree with your basic  
4 understanding of the world?

5 MR. SCHULTZ: Objection.

6 THE WITNESS: That is human nature, yes,  
7 the way that we have evolved.

8 BY MR. ST. JOHN:

9 Q. I suppose the good Lord could shut off  
10 gravity and suddenly your baseball is not going to go  
11 to your son, but that would be an astounding  
12 surprise, right?

13 A. That is correct.

14 Q. And so your analysis here today is that,  
15 okay, I think the asylum IFR may not be fully rolled  
16 out yet or may even only be rolled out a little, but  
17 its ultimate result is predictable.

18 MR. SCHULTZ: Objection.

19 BY MR. ST. JOHN:

20 Q. Correct?

21 A. Based upon the statistics that I've seen  
22 and based upon the differential with respect to  
23 asylum officer grants and immigration grants, I  
24 believe that it is predictable.

25 And with respect to the 21-day rule, the

1 completion of that, it would be performed more  
2 quickly. I'll note that detain cases are generally  
3 contained for about 41 days.

4 As I told Mr. Schultz before, nondetained  
5 cases can go on for an extended period of time, for  
6 years before reaching a rule.

7 Q. I think Mr. Schultz asked you a little bit  
8 about fraud, and I think you testified that there was  
9 a fraud unit in USCIS.

10 Am I recalling things correctly?

11 A. There is in that -- there is a fraud unit  
12 in FDNS that is charged with detecting fraud  
13 particularly in applications and with respect to  
14 safeguarding the national security of the United  
15 States.

16 Q. Will the 21-day period, under the asylum  
17 IFR, impact the ability of that USCIS unit to detect  
18 and resolve fraud?

19 MR. SCHULTZ: Objection.

20 THE WITNESS: It will have two significant  
21 impacts. Because the -- because of the short  
22 period of time, there will be no opportunity  
23 for -- there will be little opportunity in most  
24 cases, in almost any case, for FDNS to actually  
25 assess the claim for fraud.

1           The other way that it would virtually  
2           affect it is one of the things that FDNS does is  
3           they compare asylum applications, I589s, across  
4           different applications, look for similarities,  
5           similar language and things like that in sussing  
6           out fraud because it waives the I589  
7           requirement.

8           I have no idea how in the world FDNS is  
9           going to be able to assess fraud in that  
10          process, and I'm concerned about the effect it  
11          would have on national security as well.

12       BY MR. ST. JOHN:

13           Q.    Hate to have to walk you through this line  
14           of questioning, Judge, but given what transpired  
15           today, I feel I need to.

16                Judge, you made a statement about your math  
17           skills. Do you recall that statement?

18           A.    I do, Counsel.

19           Q.    And based on your demeanor, quite frankly,  
20           I understood that was a joke. Was it a joke, Your  
21           Honor?

22                MR. SCHULTZ: Objection.

23                THE WITNESS: It was a joke, Counsel. I  
24           generally check my math more than once to make  
25           sure that I didn't make an error.

1 BY MR. ST. JOHN:

2 Q. And you're generally familiar with  
3 statistics in the ordinary course of the work you do  
4 for CIS; is that correct?

5 MR. SCHULTZ: Objection.

6 THE WITNESS: I am familiar with  
7 statistics. There's a lot of statistics out  
8 there, so I'm constantly, as I mentioned before,  
9 discovering new sorts -- new data sets that I  
10 can use to refine my analysis.

11 BY MR. ST. JOHN:

12 Q. Judge, it would be misleading, wouldn't it,  
13 to take your joke and treat it as anything other than  
14 a joke; do you agree with that, Judge?

15 MR. SCHULTZ: Objection.

16 THE WITNESS: I do, Counsel. I was -- I  
17 was being -- I was joking. Not that I don't  
18 have respect for what we're doing today.

19 BY MR. ST. JOHN:

20 Q. Judge Arthur, you work with a lot of folks  
21 at the Center For Immigration Studies, or at least  
22 several folks; is that correct?

23 A. Yeah. We're a pretty small staff, but I  
24 believe there are about 20 employees at the Center  
25 For Immigration Studies.

1 Q. You don't agree with all of them; is that a  
2 fair statement?

3 A. We pride ourselves on being nonpartisan.  
4 And I don't agree with many of the assessments that  
5 are made by my colleagues, including the one in  
6 question from Mr. North. But we have a policy of if  
7 you write it and it's relevant, it gets published.

8 Q. Judge, we talked about your experience as  
9 an immigration judge.

10 What did you -- did you have Fridays off --  
11 some Fridays off as an immigration judge?

12 A. I had an alternative work schedule, and so  
13 I would get every other Friday off.

14 Q. Judge, what did you do on those Fridays  
15 off?

16 A. I would often go to -- I apologize,  
17 Counsel, if you want to object.

18 I would often go to the U.S. CIS office in  
19 Baltimore so that I could participate in swearing in  
20 new citizens when I was there. A couple of times  
21 they were really special things. I'm sure  
22 Mr. Schultz is familiar, but, you know, special  
23 events particularly at the Roundhouse, the Baltimore  
24 Railroad Roundhouse in Baltimore. But often it would  
25 be at the U.S. CIS office, and I was honored to do

1 that.

2 MR. ST. JOHN: On that note, unless  
3 Mr. Schultz has anything else, I hope we're done  
4 for today.

5 MR. SCHULTZ: Thank you. It's 4:45. I  
6 just have two or three questions. So I think it  
7 will just take a moment. I'm happy to keep  
8 going, but if you need to take a break, of  
9 course we can do that. Judge Arthur, I don't  
10 think it will be more than two or three minutes,  
11 but I'm happy to take a break if you'd like.

12 THE WITNESS: No, I'm more concerned about  
13 the court reporter. I'm happy to defer to her,  
14 but I'm fine otherwise.

15 MR. SCHULTZ: That was my next question.  
16 Ms. Marsh, how are you?

17 COURT REPORTER: I'm fine.

18 FURTHER EXAMINATION

19 BY MR. SCHULTZ:

20 Q. Okay. So just a couple of questions.  
21 Judge Arthur. Did you hear me object to that last  
22 question? I was wondering if you heard me object to  
23 that?

24 A. I apologize, Counsel. I would have stopped  
25 if I heard you object.



1 Q. No, I don't want to testify. I did not  
2 object is what I'm trying to say, but I didn't want  
3 to leave the implication that I had. I thought you  
4 could answer that. I don't want to testify though.

5 So two more substantive questions: You  
6 said at the University of Virginia that you did not  
7 take statistics, correct?

8 A. I did not take statistics at the University  
9 of Virginia.

10 Q. Thank you. Also, is a casual conversation  
11 the same thing as an expert report in a case in  
12 federal court?

13 A. No, Counsel, it's not.

14 Q. Okay. And would you expect that someone  
15 writing an expert report would feel -- I'm sorry, let  
16 me start that over.

17 Is it your understanding that someone who  
18 writes a federal report should show their work more  
19 than someone having a casual conversation with  
20 someone?

21 A. With respect to that, it would be different  
22 from filing a legal brief. And certainly as a judge,  
23 certainly when I wrote legal briefs, I would cite  
24 everything that I said or add a citation for it. But  
25 if in doing an expert report, I thought it naturally

1 flowed from what I had written, I would not include a  
2 citation.

3 But yes, an expert report requires more  
4 citation generally than a casual conversation.

5 MR. SCHULTZ: Okay. Those are the only  
6 questions that I have. So Scott, did you want  
7 to follow up with anything?

8 MR. ST. JOHN: I do not.

9 MR. SCHULTZ: So I have 4:48 p.m., which I  
10 think is well within the seven hours, and I  
11 wanted to thank everyone. Judge Arthur,  
12 Ms. Marsh, and Scott, it's been a lot of  
13 questions today, but I want to thank everyone  
14 for all of your assistance today.

15 MR. ST. JOHN: The witness will read and  
16 sign.

17 COURT REPORTER: Okay. And do you both  
18 want to order a copy of the transcript?

19 MR. SCHULTZ: Yes, please.

20 MR. ST. JOHN: Yes.

21 (SIGNATURE RESERVED.)

22 (DEPOSITION CONCLUDED AT 4:48 P.M.)

23

24

25

WITNESS CERTIFICATION

I, ANDREW ARTHUR, do hereby certify that I have read and examined the contents of the foregoing testimony as given by me on December 14, 2023, and that to the best of my knowledge and belief the foregoing pages are a complete and accurate record of the testimony given by me, except as noted on the Errata Sheet attached hereto.

I have \_\_\_\_ have not \_\_\_\_ made changes/corrections.

\_\_\_\_\_  
ANDREW ARTHUR

I, \_\_\_\_\_, Notary Public for the County of \_\_\_\_\_, State of \_\_\_\_\_, hereby certify that the herein above-named appeared before me this the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_; and that I personally witnessed the execution of this document for the intents and purposes as herein-above described.

(Official Seal)

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

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DATE TAKEN: DECEMBER 14, 2023

To assist you in making any corrections, please use the form below. If supplemental or additional pages are needed, please furnish same and attach thereto.

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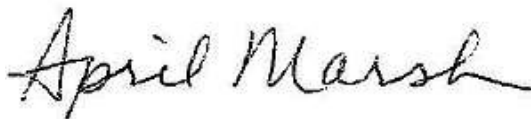
2 COUNTY OF DAVIDSON

3  
4 CERTIFICATE OF REPORTER

5  
6 I, APRIL H. MARSH, Notary Public, do hereby certify  
7 that the witness whose testimony appears in the foregoing  
8 transcript was duly sworn or affirmed by me prior to the  
9 taking of the foregoing proceeding; that said proceeding was  
10 taken by me to the best of my ability and transcribed under  
11 my supervision and direction; that the parties were present  
12 as stated; and that I am not of counsel for, related to, in  
13 the employment of any of the parties to this action, nor am  
14 I financially or otherwise interested in the outcome of this  
15 action.

16 I do further certify that the foregoing pages  
17 constitute a true and accurate transcript of the  
18 proceedings.

19  
20 This the 17th day of December 2023.

21  
22   
23

24 April H. Marsh

25 Notary Public Number 201119500253

1 Scott St. John, Esq.

2 stjoh@ag.louisiana.gov

3 December 18, 2023

4 RE: State Of Arizona Et Al v. Garland, Merrick Et Al  
5 12/14/2023, Andrew Arthur (#6327627)

6 The above-referenced transcript is available for  
7 review.

8 Within the applicable timeframe, the witness should  
9 read the testimony to verify its accuracy. If there are  
10 any changes, the witness should note those with the  
11 reason, on the attached Errata Sheet.

12 The witness should sign the Acknowledgment of  
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14 Copies should be sent to all counsel, and to Veritext at  
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19 If the witness fails to do so within the time  
20 allotted, the transcript may be used as if signed.

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[01130 - 2023]

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Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

DISCLAIMER: THE FOREGOING FEDERAL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.

THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

VERITEXT LEGAL SOLUTIONS

COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

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